County of San Mateo. This bill was signed by the Governor (Chapter 206, Statutes of 1990).

The following is a status update of bills previously reported in CRLR Vol. 10, No. 1 (Winter 1990) at pages 100-101:

AB 213 (Floyd), as amended January 18, would repeal an exception to the Penal Code prohibition of the sale or exposure for sale of intoxicating liquor near certain institutions, for sales by a licensee within the premises occupied by any bona fide club situated within one mile of the grounds belonging to the University of California at Berkeley. This bill is still pending in the Senate Governmental Organization Committee.

AB 151 (Floyd), which would require applicants for an alcoholic beverage license to post a notice of intention to engage in the sale of alcoholic beverages at each entrance of the premises and would specify the contents of that notice, is still pending in the Senate Governmental Organization Committee.

AB 205 (Floyd), as amended June 12, would permit the holder of a distiller's, bottler's, or importer's license to purchase advertising space and time from, or on behalf of, an on-sale retail licensee who is the owner of the arena in Sacramento County, and would also permit a beer manufacturer, without regard to whether the beer manufacturer is licensed as such in California, to purchase advertising space in other specified facilities. The bill would also incorporate changes in section 25503.26 of the Business and Professions Code proposed by SB 2411, to be operative only if both bills are chaptered and this bill is chaptered last. This bill is pending in the Senate Governmental Organization Committee.

AB 1742 (Friedman), which would prohibit 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, is still pending in the Assembly Governmental Organization Committee.

LITIGATION:

Proponents of four initiatives slated to appear on the November 1990 ballot recently filed suit to remove Proposition 136, which would nullify the four even if they pass by a majority vote. In *Van de Kamp v. Eu*, No. C009032 (Third District Court of Appeal), filed June 13, the proponents of several tax-raising initiatives challenge the validity of the so-called "Taxpayers Right to Vote Act of 1990" (Proposition 136), on grounds it violates the single-subject rule and is therefore unconstitutional.

Proposition 136 would require that statewide initiatives designed to adopt new "special taxes" must have a two-thirds majority approval from the voters or both houses of the legislature. The initiative is also expressly designed to affect other propositions appearing on the same ballot. Thus, if Proposition 136 passes by a majority vote, Proposition 134 (the Alcohol Tax Initiative sponsored by Assemblymember Lloyd Connelly and a number of public interest organizations), Proposition 126 (the alcohol industry's minimal tax increase proposal), Proposition 128 (Attorney General John Van de Kamp's Environmental Protection Act of 1990), Proposition 133 (Lieutenant Governor Leo McCarthy's Safe Streets Act of 1990), and Proposition 129 (Van de Kamp's Comprehensive Crime Reduction and Drug Control Act of 1990) would all fail unless they receive a two-thirds approval vote.

On June 21, the Third District Court of Appeal declined to review the case without comment. However, the California Supreme Court subsequently granted the plaintiffs' petition for review, and will hear the case on an expedited basis.

In *People v. Paulson*, No. A044696 (Jan. 4, 1990), the First District Court of Appeal upheld ABC's warrantless search for drugs of a licensee's premises because the search fell under the "closely regulated business exception" to the search warrant requirement. In March 1988, an ABC investigator followed up on an anonymous tip and conducted a warrantless search for narcotics at the "My House" bar in San Francisco. The ABC agent found 5.5 grams of cocaine. The owner of the liquor license was subsequently convicted on one count of possession of cocaine. The licensee appealed on grounds that the search exceeded the scope of administrative searches permitted by Business and Professions Code sections 25733 and 25755, and that the regulatory scheme created in those statutes is unconstitutional. In rejecting the licensee's argument, the court affirmed ABC's power to search licensee premises without a search warrant.

The court stated that "legislative schemes authorizing warrantless administrative searches of commercial property do not necessarily violate" the Fourth Amendment's prohibition on warrantless searches. Since commercial premises owners necessarily have a lesser expectation of privacy on such property, the U.S. Supreme Court has recognized an exception to the search warrant rule where "closely regulated industries, which by their very nature, require unannounced visits from government agents," if (1) there is a substantial government interest; (2) the warrantless inspections are necessary to further the regulatory scheme, and (3) the scheme provides a "constitutionally adequate substitute" for a warrant.

Here, the court found a substantial government interest in preventing the sale of drugs on licensed premises because of the potential threat to the "safety, welfare, health, peace and morals of the people of the State." The court also found that the second prong of the test was satisfied because contraband may be easily concealed, such that the sale of contraband "can only be deterred by frequent and unannounced inspections." The last requirement was satisfied, according to the court, because section 25753 of the Business and Professions Code explicitly states that ABC agents may, in enforcing the laws under the Alcoholic Beverage Control Act, "visit and inspect the premises of any licensee at any time." More specifically, section 24200.5 requires mandatory license revocation if a "retail licensee has knowingly permitted the legal sale, or negotiations for such sales of controlled substances or dangerous drugs" upon the licensed premises. Taken together, the court found that licensees "cannot help but be aware" that their property will be "subject to periodic inspections...for the specific purpose of determining" whether they are permitting the sale of controlled substances or dangerous drugs on the premises. The requirements of the exception being fulfilled, the First District invoked the "closely regulated business" exception to the search warrant requirement and upheld the warrantless search.

The California Supreme Court subsequently denied Paulson's petition for review, thus leaving the First District's decision intact.

BANKING DEPARTMENT

Superintendent: James E. Gilleran
(415) 557-3232
Toll-Free Complaint Number:
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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 20 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:

Accreditation for Performance Standards. The Department recently became the eighteenth state banking regulator to receive formal accreditation from the Conference of State Bank Supervisors (CSBS). CSBS is the professional association that represents the state bank regulators of the fifty states, the District of Columbia, three territories, and approximately 4,000 state-chartered commercial and savings banks. The Accreditation Program involves a comprehensive review of a banking department's functional areas: administration, finances, personnel policies and practices, training programs, examination and supervisory procedures, and statutory powers.

The process covers several steps: first, a state banking department must complete the self-evaluation questionnaire developed by the CSBS Performance Standards Committee (PSC), which covers the above-mentioned functional areas. Second, an Accreditation Review Team appointed by PSC conducts a thorough onsite examination of the department and reports its findings to the Committee. Third, an Audit Team checks the work of the Review Team to assure the requisite level of discipline in each examination, consistency between examinations, and compliance with standards and procedures established by the PSC. Finally, the PSC votes to accept the Review Team and Audit Team recommendations and officially accredits the department, subject to annual review.

1989 Earnings of California State-Chartered Banks. SBD reports that the 267 state-chartered banks compiled aggregate earnings of $1.03 billion in 1989, thus crossing the billion-dollar mark for the first time, and recording a 28% increase over 1988. Ninety-four percent of the banks were profitable, as only 16 of the 267 banks showed losses for the year, the lowest number of unprofitable banks in several years. The assets of all state-chartered banks showed an increase of 7.6% from 1988 year-end levels, to $101.6 billion. Delinquent loans and leases stayed at the same level as last year, at $2.8 billion. As a percentage of total loans, delinquent loans declined from 4.7% at year-end 1988 to 4.2% at year-end 1989. Real estate-related loans now comprise nearly 46% of bank loan and lease portfolios, as compared with 43% one year ago. Total past due real estate loans have remained stable at 4% of the total real estate portfolio. Prompted by concern over real estate loan portfolios in other states, the Department is starting to closely track the growth in real estate loans, as well as delinquencies at state-chartered banks, and will take steps to address problems as appropriate.

Real Estate Investments By Banks. At a recent convention of the American Bankers Association, Superintendent Gilleran reported on California's experience with the expanded powers of banks to make real estate investments with up to 10% of bank assets. Under current state law, a bank must seek the Department's approval before exercising these powers. Upon approval, an SBD task force of senior examiners monitors the related activities of the bank and tracks the investments, paying particular attention to insider involvement. California banks have gradually increased their investments in real estate, but in aggregate have invested

less than 1% of their total assets as of June 30, 1989. Most of the real estate activity is in single-family residential projects, which appears to be what the California legislature intended to encourage by granting the state banks this new authority.

Since only a few state banks have incurred minor losses as a result of the new power, SBD is frustrated with the Federal Reserve Board, which has attempted to nullify state-granted authority by forcing California bank holding companies to divest their real estate investments before allowing them to acquire additional banks, and by continuing to propose regulations affecting the ability of state-chartered banks to lawfully exercise state-granted powers. (See CRLR Vol. 9, No. 2 (Spring 1989) p. 81 for background information.) Gilleran acknowledged that the congressional sentiment against expanded bank powers is based primarily on the massive losses of the savings and loan industry. The Department, however, contrasts the sometimes unlimited grant of authority to savings and loans with the Department's restrictions and limitations on and monitoring of California state banks' real estate investments. For these reasons, and also because SBD believes that conservative use of such powers can contribute to the success of banks, the Department has consistently opposed wholesale elimination of new bank powers by the Federal Reserve Board.

LEGISLATION:

AB 3015 (Lancaster) provides for an appropriation of $1,755,000 from the State Banking Fund to the State Banking Department in augmentation of a budget act appropriation. This bill goes into immediate effect as an appropriation for the usual current expenses of the state. This bill was signed by the Governor on May 18 (Chapter 99, Statutes of 1990).

AB 2728 (Lancaster). Existing law imposes requirements relating to the contents of mortgage contracts, deeds of trust, real estate sales contracts, or any note or negotiable instrument issued in connection with any of these documents used to finance the purchase or construction of real property containing four or fewer residential units or on which four or fewer residential units are to be constructed when the security document or evidence of debt provide for a variable rate of interest. Existing law also specifies that the requirements relating to those instruments do not apply to supervised financial organizations, as defined. This bill, which was signed by the Governor on June 22 (Chapter 157, Statutes of 1990), revises the definition of "supervised financial institution" for those purposes, and applies to any security document or evidence of debt issued on or after January 1, 1990.

AB 2793 (Lancaster), as introduced February 6, would increase the fee, from $250 to $500, required to accompany the application by a bank or trust company to change the location of its head office. This bill is pending in the Senate Banking and Commerce Committee.

SB 2163 (Hart), as amended June 7, would require the Insurance Commissioner, the Superintendent of Banks, the Savings and Loan Commissioner, and the Commissioner of Corporations to adopt regulations governing ex parte communications with respect to their departments. In general, these regulations would require a copy of written ex parte presentations, and a memorandum of ex parte oral presentations to decisionmakers, to be placed in the public file or record of the affected proceeding. The bill would additionally require the adoption of procedures to ensure compliance with these provisions and to provide public notice listing written ex parte presentations and memoranda of oral presentations received during the previous week relating to affected proceedings. The bill would also permit the issuance of a public notice adopting more stringent regulations governing ex parte communications when it is in the public interest with respect to particular proceedings to do so. Unless exempted, the bill would prohibit any ex parte communication to decisionmakers during the period of time that this provision has been made applicable to the matter. The bill would make a violation of any regulations adopted pursuant to these provisions a misdemeanor subject to a specified fine. This bill is pending in the Assembly Finance and Insurance Committee.

AB 4064 (Epple), as amended May 3, would amend Corporations Code section 25140 to impose restrictions on the sale of securities by banks, savings associations, and industrial loan companies, and require specified regulators (including SBD, the Department of Savings and Loan, and the Department of Corporations) to exchange information regarding enforcement action taken against financial institutions and open investigations of financial institutions. This bill is pending in the Senate Banking and Commerce Committee.

SB 2494 (Vuich), as amended May 31, would prohibit any financial institution with defined insured deposits from offering to the public, at any office at which it accepts deposits, any security of which it is the issuer, or any security of its holding company, parent, or affiliates that is not insured by a federal agency or instrumentality, except as permitted by state or federal law or regulation or by prior written approval of a financial institution regulator. It would also prohibit employees of financial institutions from soliciting the sale of those securities or directing persons to a place where those securities may be purchased. This bill is pending in the Assembly Finance and Insurance Committee.

SB 2496 (Vuich), as amended June 7, would require the sentencing court to order restitution by persons convicted of certain financial institutions-related felonies. The bill would prohibit any person convicted of specified felonies from being a director, officer, or manager of a financial institution with federally or state insured deposits. The bill would not apply with respect to pre-1991 convictions of directors, officers, or managers whose office or employment commenced before January 1, 1991. The bill would require any person seeking employment or control of such a financial institution on and after January 1, 1991 to permit the financial institution, its regulatory agency, or both to have access to specified criminal records of the person. The bill would exempt financial institutions from civil liability for providing written employment references to other financial institutions advising of an applicant's involvement in defalcation that has been reported to federal authorities pursuant to federal banking guidelines, unless the information provided is known by the financial institution making the reference to be false. The reporting financial institution would have to provide a copy of the employment reference to the employment applicant. This bill is pending in the Senate Appropriations Committee.

SB 2745 (Boatwright), as amended May 16, would provide that "investment and loan" means an industrial loan company, and require, if applicable, the use of that term as a part of the company name. This bill is pending in the Assembly Finance and Insurance Committee.

SB 2490 (Vuich). The California Interstate (National) Banking Act of 1986, which becomes operative January 1, 1991, authorizes a foreign bank holding company, with the prior approval of the Superintendent, to cause or permit an existing California bank or California bank holding company to become a sub-

sidiary, to acquire directly or indirectly the assets of any California bank or California bank holding company, or to merge or consolidate with any California bank or California bank holding company. With respect to the acquisition of assets mentioned above, this bill would, among other things, instead authorize the acquisition of direct or indirect ownership of, or power to vote more than 5% of the voting shares of any California bank or California bank holding company. It would additionally authorize the acquisition, directly or indirectly, of all or substantially all of the assets of any California bank or the assumption, directly or indirectly, of any of the deposits of a California office of a California bank. This bill, last amended April 24, is pending in the Assembly Finance and Insurance Committee.

AB 3813 (Lewis), as amended May 16, would revise various definitions applicable to the California Interstate (National) Banking Act of 1986; set forth provisions setting forth the home state of foreign (other nation) banks and bank holding companies, and foreign (other state) banks; exempt certain forms of ownership from the definition of control of a company; permit the acquisition or ownership of more than 5% of the voting shares of a California bank or California bank holding company, with approval of the Superintendent of Banking; prohibit the acquisition of all or substantially all of the assets of any California bank and prohibit the assumption of deposits of a California office of a California bank; repeal the exemption for acquisitions of certain transactions involving a bank or bank holding company that has, or is controlled by a company that has, its head office located, or its operations principally conducted, outside the United States, and would instead exempt certain acquisitions in a fiduciary capacity, or in the regular banking business, or certain mergers or consolidations of a California bank with another California bank, and certain mergers of a foreign bank holding company with a California bank or California bank holding company in which the California bank or California bank holding company is the surviving corporation; require the Superintendent's approval for certain acquisitions of shares, and impose a fee that would be deposited in the State Banking Fund; and authorize the Superintendent to provide additional information to regulatory authorities or other jurisdictions. This bill is pending in the Senate Banking and Commerce Committee.

The following is a status update of bills reported in CRLR Vol. 10, No. 1 (Winter 1990) at page 102:

SB 476 (Robbins), which would specify that time deposits include a time certificate of deposit, was amended on May 21 and is pending in the Assembly Finance and Insurance Committee.

AB 244 (Calderon), as amended June 13 would enact provisions with respect to the safe use of automated teller machines, including certain location, installation, and lighting standards, as specified. The bill, which would also state legislative intent, is pending in the Senate Banking and Commerce 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:

Enforcement Action Against Charles Keating. As a result of the estimated $250 million in investor losses in the Lincoln Savings and Loan collapse, the Department of Corporations has filed a civil action charging Charles Keating, American Continental Corporation (ACC), and two of its top officers and directors, Judy Wischer and Andrew Ligget, with securities fraud, fraud in application for qualification, offer/sale of unauthorized securities, and unauthorized advertising. The Department's