



## REGULATORY AGENCY ACTION

basis of age, sex, race, religion, color, ancestry, or national origin. At this writing, the bill is pending on the Assembly floor.

**AB 1361 (Friedman)** resurrects AB 2187 (Friedman), which was vetoed by Governor Deukmejian last fall (see CRLR Vol. 9, No. 1 (Winter 1989) p. 69 for background information). This bill would, on and after January 1, 1990, prohibit the issuance or renewal of any alcoholic beverage 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 has become a two-year bill.

**AB 78 (Hansen)** would require a fourth drunk driving offense within seven years to be prosecuted as a felony, and would require the court to sentence the person to imprisonment in the state prison and pay a fine of not less than \$390 and not more than \$2,500. This bill is pending in the Assembly Ways and Means Committee.

**AB 261 (Floyd)**. Existing law prohibits the holder of an alcoholic beverage wholesaler's license from holding ownership in any on-sale alcoholic beverage license, except in counties with populations less than 15,000. This bill would increase that population figure to 25,000. This bill is pending in the Assembly Committee on Governmental Organization.

**SB 327 (Beverly)** would authorize any person who holds any other ABC license and who has been in the restaurant business outside of California to hold an on-sale general license provided other specified conditions are met. This bill is pending in the Senate Governmental Organization Committee.

**SB 346 (Nielsen)** would authorize a licensed winegrower to hold, directly or indirectly, the ownership of any interest in an on-sale license if (1) the premises are licensed as a bona fide eating establishment; (2) alcohol beverages sold and served at the premises are purchased only from a California wholesale license; and (3) the wine items of that winegrower or any person holding any interest in the winegrower do not exceed 15% of the total wine items listed and offered for sale in that bona fide eating place. This bill is pending in the Senate Governmental Organization Committee.

**SB 396 (Dills)**. Existing law prohibits any manufacturer, winegrower, manufacturer's agent, rectifier, California winegrower's agent, distiller, bottler, importer, or wholesaler, or any officer, director, or agent of any such person

from owning any interest, directly or indirectly, in any realty acquired after June 13, 1935, upon which on-sale premises are maintained, unless the holding of the interest is permitted in accordance with ABC rules. This bill, which is pending in the Senate Governmental Organization Committee, would delete the requirement that the realty be acquired after June 13, 1935.

### LITIGATION:

In January, the ABC appealed a decision of its own Alcoholic Beverage Control Appeals Board. In December, the Appeals Board validated a coupon-rebate promotion which gave a consumer a 130% refund on his purchase price. The ruling came after the ABC has suspended Heublein, Inc. for ten days after Heublein had offered a bottle of Yukon Jack Canadian Liqueur for \$1.91 with a refund price of \$2.50. The ABC termed this refund promotion as gift, a violation of the ABC's restrictions against giveaways.

After the Appeals Board approved the rebate program, the ABC filed a petition for writ of review in the First District Court of Appeal in San Francisco. The appellate court's ruling could result in a complete revision of the ABC's prohibitions on free alcohol gifts and other industry promotions which provide prizes and rebates for purchasing alcohol. A final decision is expected to take several months.

### BANKING DEPARTMENT

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The State Banking Department 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 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 administers the Small Business Loan Program, designed to provide long-term capital to rapidly growing small businesses whose growth exceeds their ability to generate internal earnings. Under the traditional standards used by banks, these small businesses cannot provide adequate security to qualify for regular bank loans.

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:

*Approval of Bank Insurance Sales.* On December 7, the California Supreme Court lifted its stay on several provisions of Proposition 103, including provisions permitting the sale of insurance by banks. (See CRLR Vol. 9, No. 1 (Winter 1989) pp. 70 and 73 for background information.) However, Proposition 103 did not address Financial Code sections 1208 and 772(b), which prohibit banks from selling insurance. In the Department's January 6 Bulletin, Superintendent Gould stated that the Department considers the Financial Code restrictions "repealed by implication with the passage of Proposition 103." The Department of Insurance deferred to the Banking Department's interpretation of the Financial Code, and on January 27 approved the first two applications submitted by banks to sell insurance. Almost immediately after the licenses were issued to Security Pacific National Bank of San Diego and the Los Angeles-based First Interstate Bank of California, a lawsuit to suspend or revoke the licenses was filed by the Independent Insurance Agents and Brokers of California, Professional Insurance Agents Association of California and Nevada, California Association of Life Underwriters, and

Independent Insurance Agents of America. The lawsuit challenges the Banking Department's interpretation of the Financial Code as "repealed by implication," and alleges the Administrative Procedure Act has been violated because the Insurance Commissioner Roxani Gillespie did not conduct any rulemaking procedures prior to adopting the Superintendent's interpretation. On February 2, Sacramento Superior Court Judge James T. Ford denied the insurers' request for a temporary restraining order, based on the court's unclear jurisdiction over the matter because of the state Supreme Court's decision to rule on the validity of Proposition 103. (See *infra* agency report on DEPARTMENT OF INSURANCE for further information on the effects of Proposition 103.)

To monitor the expanded bank authority, the Department has announced it will ask each bank planning to become an insurance agent to submit a report on its business plan relating to insurance activity at least ten days prior to engaging in that business. The bank's insurance agency operations and the implementation of its business plan will be reviewed by the Department at bank examinations.

*Superintendent's Testimony Before the House Banking Committee.* On January 12, Superintendent Gould delivered testimony to the U.S. House of Representatives Committee on Banking, Finance, and Urban Affairs, reporting on the condition of state-chartered banks through September 1988. (See CRLR Vol. 9, No. 1 (Winter 1989) p. 70 for background information.) The Superintendent reported that California is currently served by 442 commercial banks, 272 of which are state-chartered banks with \$94 billion in banking assets. The Superintendent also reported on the improved performance of state banks. No state-chartered bank failed through September 1988. State bank earnings increased from \$83 million for full-year 1987 to \$560 million through September 30, 1988. There was also an increased return on assets and equity for state-chartered banks, and a decline in the volume of delinquent loans. The Superintendent credited the state banks' success on the strength and diversity of the California economy. In an effort to dispel any misunderstanding at the federal level, the Superintendent assured the Committee that California banks exercising the expanded authority statutorily granted to them—including the authority to invest in, develop, and own real property, the authority to invest in equity securities of corporations, and

the authority to sell insurance—must limit their investments to a certain percentage of the bank's assets, and are required to adhere to an approval process through the Department including a comprehensive regulatory program limiting any marginal risks presented by the new powers. Finally, the Superintendent expressed his frustration with actions of the Federal Reserve Board in requiring California bank holding companies to divest their real estate activities before the Board approves the holding company's acquisition of an additional bank, and in proposing regulations adversely affecting the ability of state-chartered banks to lawfully exercise state-granted powers.

*Quarterly Report.* At the close of business on September 30, 1988, the 272 state-chartered banks of deposit with 1,663 branches had total assets of \$93.6 billion, an increase of \$3.5 billion, or 3.9%, from September 30, 1987. During this one-year period, there was a net decrease of 8 banks and 76 branches. Fiduciary assets of the trust departments of 38 state-chartered banks, one title insurance company, and 20 non-deposit trust companies totalled \$184.5 billion, an increase of \$77.2 billion, or 71.9%, from September 30, 1987. The assets of 101 agencies and branches of foreign banking corporations with 120 offices increased 12.9% to \$74.3 billion.

*Stanley Cardenas Appointed Senior Deputy Superintendent.* Stanley Cardenas, formerly associated with the Fresno law firm of Dierich, Glasrud and Jones, was appointed Senior Deputy Superintendent of Banks effective September 30, 1988. As Senior Deputy Superintendent, Cardenas will be primarily involved with the Department's federal legislative and public affairs programs.

## LEGISLATION:

*AB 244 (Calderon)* would require financial institutions—including banks, savings associations, credit unions, and industrial loan companies—which operate automated teller machines (ATMs) outside or away from their premises to comply with minimum standards of lighting, landscaping, and location commencing July 1, 1990. This bill would also require the financial institution to discontinue operation between 7:00 p.m. and 6:00 a.m. daily of any ATM in a location experiencing three or more crimes in one calendar year. This bill is pending in the Assembly Committee on Finance and Insurance.

*AB 438 (Lancaster)* would exempt banks, savings associations, and credit



# REGULATORY AGENCY ACTION

unions from the existing requirements concerning the contents of certain mortgage contracts, deeds of trust, real estate sales contracts, and notes providing for a variable interest rate. This bill is pending in the Assembly Finance and Insurance Committee.

*SB 270 (Stirling)* would require the Superintendent to report to the Secretary of State the conversion of state-chartered banks into national banking associations, and would provide that the bank shall no longer be considered organized under the laws of California after the report is filed with the Secretary of State. The bill would also require the Secretary of State to file the report with the bank's articles of incorporation. This bill is pending in the Senate Banking and Commerce Committee.

*AB 2521 (Johnston)* would repeal the entire California Banking Law (California Financial Code sections 99-3904) and replace it with 468 new sections of code. (See CRLR Vol. 9, No. 1 (Winter 1989) pp. 70-71 for further information.) This California Bankers Association-sponsored legislation is pending in the Assembly Finance and Insurance Committee.

## DEPARTMENT OF CORPORATIONS

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The Department of Corporations is a part of the cabinet-level Business and Transportation Agency. A Commissioner of Corporations, appointed by the Governor, oversees the Department.

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:

*OAL Approves Regulation Changes Under the Corporate Securities Law.* On February 8, the Office of Administrative Law (OAL) approved the Com-

missioner's proposed changes to sections 260.113 and the addition of new Subarticle 7.2 to Article 4, Subchapter 2, Chapter 3, Title 10 of the California Code of Regulations (CCR), regarding the offering of debt securities by churches. These new regulations became effective on March 10.

The Commissioner also amended section 250.9.1, regarding Department records which are subject to public inspection. Previously, information in the NASAA/NASD Central Registration Depository (other than the names, file numbers, addresses, dates of employment or termination, and the name of employment broker-dealer of California registered securities agents) was exempt from public disclosure; this amendment removes that exemption.

An amendment to section 260.241.4 provides that, effective February 1, 1989, each licensed broker-dealer who is a member of the National Association of Securities Dealers, Inc., shall file changed information contained in its Form BD and Schedules A or B or C and D and E thereto (Uniform Application for Broker-Dealer Registration), through the Central Registration Depository in accordance with its procedures for transmission to the Commissioner.

Also effective February 1, existing section 260.242 was repealed, and new section 260.242 took its place, requiring applications to surrender a certificate as a broker-dealer to be filed on Form BDW (Uniform Request for Broker-Dealer Withdrawal).

Finally, the Commissioner made technical amendments to sections 260.146 (requirement of semi-annual report) and 260.236 (qualifications of investment advisers and associated persons), Chapter 3, Title 10 of the CCR. These amendments became effective on February 9.

*Investor Alert Regarding Penny Stock Fraud.* On February 3, the Commissioner issued an investor alert regarding high-pressure telephone sales operations touting penny stock offerings. Penny stocks are low-priced stocks traded over the counter, usually by only one or two brokers or market makers.

Investors are receiving unsolicited telephone calls from broker-dealers using high pressure tactics in offering huge profits with "little risk" in penny stock offerings. However, it is easy for brokers to manipulate the price of the stocks and it is difficult for investors to find out if the price is a fair one or if the stock has any value. The Commissioner warned that many of the penny stocks which are being offered to investors are