



*Additional Investigators.* Last year's budget enabled the ABC to hire fifteen new investigators and support staff. The new investigators will assist in enforcement and educational programs; the additional staff members will answer questions from licensees to help them avoid violations by maintaining proper business practices.

## LEGISLATION:

*AB 773 (Floyd)*, which would provide that an on-sale beer and wine license may be issued or transferred to any person with respect to premises which are an integral part of a restaurant owned by or operated by or on behalf of the licensee, notwithstanding that a wholesaler licensed to sell alcoholic beverages in states other than California has an interest in the premises, license, or licensee, under certain specified conditions. This bill was passed by the Senate and referred back to the Assembly for concurrence in amendments.

*AB 1887 (Floyd)*, which would have repealed existing Penal Code provisions prohibiting the sale or exposure for sale of liquor within or near certain institutions, died in committee. (See CRLR Vol. 8, No. 1 (Winter 1988) p. 76 for details on this bill.)

*AB 850 (Klehs)*, which would have authorized out-of-state manufacturers to give away samples of alcoholic beverages to consumers, died in committee.

*AB 2495 (Friedman)*, which would have imposed "dram shop" liability on licensees who sell or furnish alcohol to an intoxicated person or minor who subsequently causes an injury-related accident, was withdrawn by its author.

*AB 612 (Sher)* would extend the statewide beverage container recycling program and penny-per-container refunds to wine cooler containers. As amended on March 15, AB 612 specifies that containers of 100% fruit juice with carbonation added are not included in the recycling program. This bill is pending in the Senate Appropriations Committee.

*AB 3327 (Areias)* would authorize a licensed beer manufacturer, a holder of an out-of-state beer manufacturer's certificate, a licensed winegrower or brandy manufacturer, and a licensed wholesaler or importer to be issued and hold retail package off-sale beer and wine licenses, as specified. AB 3327 is intended to correct inadvertent changes made by AB 1712 (Chapter 68, Statutes of 1987), and is pending in the Assembly Governmental Organization Committee at this writing.

*SB 1730 (Dills)* would, with respect to beer and other malt beverages, deem the person who obtains labeling approval from the ABC to be the beverage manufacturer responsible for paying the processing fees for the state's new recycling program. This bill is pending in the Senate Committee on Natural Resources and Wildlife.

*SB 2257 (Dills)* would authorize the ABC to issue a temporary permit to the transferee of a retail license to continue the operation of the premises for a period of 120 days; the fee for the temporary permit would increase to \$100. This bill is pending in the Senate Governmental Organization Committee.

*SB 2316 (Dills)* would provide that, with respect to stays of license suspensions, an offer in compromise shall be not less than \$300. This bill is also pending in the Senate Governmental Organization Committee.

*SB 625 (Maddy)*, as amended January 7, would authorize a retailer of beer to return discontinued brands of beer to the seller for the same quantity of a brand of similar quality. At this writing, SB 625 is pending in the Assembly Governmental Organization Committee.

*SB 2014 (Deddeh)* would authorize the holder of no more than six on-sale liquor licenses to (1) hold not more than 25% of the stock of one corporate licensed beer manufacturer that produces 60,000 barrels or less a year and is located in San Diego County; and (2) serve on the board of directors and as an officer or employee of that manufacturer. This bill is pending in the Senate Governmental Organization Committee.

*AB 1345 (Leonard), AB 1898 (Hauser), AB 2377 (Statham), and SB 1103 (Seymour)*, discussed in detail in CRLR Vol. 8, No. 1 (Winter 1988) p. 76, died in committee.

## BANKING DEPARTMENT

*Superintendent: Howard Gould*  
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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:

*Comments Sent to Federal Reserve Board.* On December 3, Superintendent Howard Gould wrote the Board of Governors of the Federal Reserve System (Board) and commented on its November 2 proposals affecting real estate development and investment powers of banks and bank holding companies. The Department is opposed to proposed action by the Board to further limit the real estate authority granted to banks under California law. The Board has proposed to require that real estate investment activities be conducted in nonbank subsidiaries of bank holding companies, not in banks directly or through bank subsidiaries. The Board also proposes lending restrictions for transactions between real estate subsid-

aries and banks, and would also provide special capital requirements for real estate subsidiaries of bank holding company banks.

Superintendent Gould opposes the proposals because he believes they would unnecessarily intrude upon the opportunities afforded banks under California law. The California legislature has given state banks the power to invest in, purchase, develop, own, manage, and sell real property. The authority is limited to 10% of the assets of the bank when real estate activity is conducted through subsidiaries, and limited to the capital of the bank when undertaken directly. Before a bank may engage in real estate activities it must secure the approval of the Superintendent, which is granted only to satisfactorily performing banks and only after demonstrating financial and managerial capacity to carry out the activity. The Banking Department has also designed an examination program to deal with bank real estate activities.

The Superintendent contends that the Board's proposals will have the effect of eroding the dual banking system by further centralizing control over the activities of state banks, adversely affecting the ability of states to govern their own banks and to respond to local conditions. His letter states: "Congress has expressed clearly its desire to maintain this dual system and the Board should not act to diminish that system." The Superintendent ended his comments by restating his position of March 29, 1985, that "we do not believe that the Bank Holding Company Act grants authority to the Board to directly or indirectly restrict the activities of a bank subsidiary of a bank holding company, nor is the Board granted authority to force bank subsidiary real estate activity into only a separate holding company subsidiary."

*Task Force on Financial Planners.* Pursuant to SCR 30 (Chapter 145, Statutes of 1987), a 35-member Task Force appointed to study and develop guidelines for the regulation of financial planners began to meet in October. The Task Force was created following the Governor's veto of a bill which would have placed stringent guidelines on those offering financial planning services. SB 315 (Montoya), vetoed in September 1987, would have required licensing, testing, and regulation of anyone who functions as a financial planner. The bill was strongly opposed by several banking, life insurance, and tax accountant organizations. (See CRLR Vol. 7,

No. 1 (Winter 1987) p. 68 and Vol. 6, No. 2 (Spring 1986) p. 63 for background information.)

In addition to the growing number of financial planners, widespread publicity about massive fraud cases which have financially drained hundreds of California investors has demonstrated the need for some type of regulation, according to Amiel Jaramillo, Chief Consultant for the Senate Business and Professions Committee. Two of the more publicized cases are those involving Ronald J. Morrow, who swindled more than 250 investors out of \$7 million in northern California, and J. David Dominelli of San Diego, who cheated a number of investors out of more than \$60 million.

According to Jaramillo, "a lot of them [financial planners] are not qualified, and yet they are hanging up shingles. There is no prohibition, no standards or regulations to keep them from doing it. And clients think they are another group of professionals and put their trust in them, only to find out later these guys have run off with their money, or their advice didn't pan out and now they are broke." Another problem is conflict of interest. Instead of receiving financial planning advice which is in their best interests, consumers sometimes receive what is best for the financial planner, who may receive commissions for products or services he/she sells.

The Task Force has considered less harsh, non-licensing methods of controlling financial planners and protecting consumers. To date, a self-policing policy is preferred, which would require financial planners to disclose to customers any possible conflict of interest, such as commissions or fees they may receive for enrolling a client in a specific financial program; business experience and education; types of clients served by the planner; and any crimes for which the planner has been convicted in the past ten years. The Task Force drafted specific language for a bill, which has been amended into currently-existing SB 315 (Montoya) (*see infra* LEGISLATION).

*Department Budget Announced.* After extensive internal review, the Superintendent of Banking has submitted the Department's 1988-89 fiscal year budget. According to Superintendent Gould, the budget, which is financed entirely by industry assessment, focuses on goals "which will help us attain a higher level of performance." The budget highlights are as follows:

-Staff Training. The Department pro-



poses an additional \$100,000 for training at all levels within the Department. The Superintendent considers this budget proposal a necessary element in the Department's efforts to assure that staff is equipped to address the regulatory challenges of the future. In addition to this budget request, the Department has already committed funds to build a video training library and is working with the Conference of State Bank Supervisors Education Foundation to bring additional training opportunities to the Department.

**-Enforcement Positions.** Two new investigators are proposed to assist in identifying and addressing inappropriate activities conducted by Department licensees. In conjunction with this proposal to employ investigative staff, the Department has also implemented new procedures for routinely fingerprinting and conducting criminal background checks on all prospective officers, directors, and controlling persons in applications for new licenses or changes of control of existing licensees. Deputy Superintendent John Paulus has stated that the Department has always had this authority under the Financial Code but has exercised it selectively; however, everyone will now be fingerprinted.

**-Financial Analyst Position.** The Department's budget proposes to create a new financial analysis support capability within the Department by establishing a financial analyst position. The position will support the managers of the Department's examination and supervision function.

**Change of Address.** Effective February 1, 1988, the State Banking Department is located at 111 Pine Street, Suite 1100, San Francisco, CA 94111.

**Travelers Checks Applications.** An application filed by Barclays Bank of Canada to engage in the business of issuing travelers checks under the provisions of the California Travelers Checks Act was filed on October 23 and approved on December 11, 1987.

**Fire Destroys Bank.** The Katella-Mountain View Office of Barclays Bank of California, located at 320 Katella Way, Anaheim, was destroyed by fire on December 14. All records have been transferred to the downtown Anaheim office, located at 100 West Lincoln Avenue, Anaheim, until further notice.

**Warning to Bankers.** A warning to refrain from violating the Banking Law by doing business in California without a license was issued against the American Pacific Trust Company, 1303 Avocado Street, Suite 260, Newport Beach;

Guardian International Bank, Ltd., headquartered in the Colony of Montserrat in the British West Indies; and Churchill International Bank, 9903 Santa Monica Blvd., Beverly Hills.

## LEGISLATION:

**SB 315 (Montoya)** was reactivated in January, has passed the Senate, and is pending in the Assembly Finance and Insurance Committee at this writing.

As amended on April 5, SB 315 would enact provisions in the Business and Professions Code to require those who hold themselves out as financial planners to make specified disclosures to prospective clients, including disclosures regarding the planner's educational background, training and expertise, potential conflicts of interest, and relevant convictions. The disclosure must be made in writing if the client so requests. Failure to make required disclosures could result in a \$500 fine. (For related discussion, see *supra* MAJOR PROJECTS.)

**AB 2030 (Seastrand)**, a companion bill of SB 315, would include within the definition of "investment adviser," financial planners and other persons who, as an integral component of other financially related services, provide specified investment advisory services to others for compensation and as part of a business, or who hold themselves out as providing these investment advisory services to others for compensation. This bill would thus subject financial planners to the Department of Corporations' registration requirement applicable to investment advisers. AB 2030 is pending in the Senate Business and Professions Committee.

**AB 3515 (Johnson)** would require the Superintendent of Banks to wait ninety days after filing before considering the application of a person applying for approval to acquire control of a bank, if that person is a citizen of a foreign country or a bank or bank holding company which has (or is controlled by a company which has) its head office located outside the United States. The bill would also provide for notice of those proposed acquisitions to foreign bank holding companies with head offices or principal operations located in the United States, and would permit such a foreign bank holding company, after prescribed notification, to cause or permit the bank or controlling person to become its subsidiary, to acquire assets of the bank or controlling person in any amount, and to merge or consolidate with the bank or controlling person.

This bill is pending in the Assembly Finance and Insurance Committee.

**AB 1224 (Calderon)** would have increased the fine for a bank or trust company which opened a branch office without first obtaining permission of the Superintendent from \$100 to \$250; the bill was dropped by its author.

**AB 2662 (Areias, Harris)** would have revised the maximum finance charge which a premium finance agency may, in an insurance premium finance agreement, contract for, receive, and collect, and would have applied this rate to insurance premium finance agreements made by banks. This bill was also dropped.

**AB 2500 (Brown)** was amended on January 11 to authorize a county board of supervisors to direct the county treasurer to negotiate an agreement with a financial institution to establish a program to provide for public assistance funds deposit and disbursement. The county treasurer would be authorized to negotiate with a financial institution to provide services free of charge to persons who wish to cash public assistance checks. This bill was dropped by its author.

## 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