



alcoholic beverages. A panel of ABC officials, including Director Jay R. Stroh, Assistant Director Manuel R. Espinoza, and senior counsel Kenton P. Byers, were present to hear the witnesses. Testimony from these hearings will be used to determine whether to consider the adoption of formal regulations prohibiting happy hours and whether sufficient legal authority exists to do so.

LEGISLATION:

SB 96 (Hart) would require that prior to any wholesale or retail sale of beer, wine, or distilled spirits, the beverage container label shall contain a clearly visible health warning reading "WARNING: Drinking alcohol during pregnancy can cause low birth weight, miscarriage, or birth defects."

SB 124 (Mello) would prohibit any person licensed by ABC from importing wine into this state that was produced outside of the United States unless that person certifies that each shipment of wine meets all the requirements of the Sherman Food, Drug, and Cosmetic Law. This requirement would also apply to persons who import grape concentrate for the purpose of making wine.

AB 207 (D. Brown) would authorize a winegrower who produces 20,000 gallons or less of wine per year to sell wine for consumption in a bona fide eating place which is located in Orange County, is located off the premises of the winegrower, and is owned by and operated by or for the licensee.

AB 251 (Eaves) would exempt nudity at an authorized nudist resort or nudist campground from any regulation excluding nude persons from licensed premises. The bill would only be applicable in a county which adopts an ordinance or resolution to that effect and where the sheriff certifies that no extraordinary police problem would be created thereby.

AB 272 (Condit). Existing law prohibits an on-sale alcoholic beverage licensee from having an ownership interest in an alcoholic beverage manufacturer. This bill would authorize the holder of no more than six on-sale licenses to hold not more than 10% of the stock of a corporate licensed beer manufacturer located in Los Angeles County. This bill would authorize an on-sale licensee who operates a bona fide eating place on the premises of the corporate beer manufacturer to serve beer obtained directly from the beer manufacturer.

AB 340 (Condit). Existing law provides that in any hearing on an accusation charging an ABC licensee with a violation of specified provisions of law relating to minors, ABC is required to produce the minor for examination at the hearing unless the licensee has waived the appearance of the minor. This bill would provide that ABC is not required to produce the minor if the minor is unavailable as a witness.

AB 400 (Condit) would provide funding to ABC for the employment of not less than fifty additional special investigators, their support staff, and related expenses.

AB 850 (Klehs) would add certified out-of-state manufacturers to the list of licensees authorized to give away samples of alcoholic beverages which are authorized to be sold by the licensee.

AB 506 (Hill) would provide that beer and wine may be delivered to on-sale and off-sale general alcoholic beverage licensees between the hours of 4:00 a.m. and 8:00 p.m. on any day except Sunday.

BANKING DEPARTMENT

Acting Superintendent: Harold D. Doyle
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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:

Warnings Issued. The following companies have been issued a warning to cease and desist from doing business in California without a certificate of authority from the superintendent of banks in violation of Chapter 18 of Division 1 of the Financial Code: (1) "Common Title Bond and Trust"—warning issued October 23, 1986, Roseville, California (Sacramento area); (2) "Southwest Bank and Trust Company, Ltd."—warning issued November 26, 1986, National City, California (San Diego area); and (3) "First America Bank and Trust Company"—warning issued November 26, 1986, San Francisco, California.

On Friday, January 16, 1987, North America Savings and Loan Association (North America), located in Santa Ana, was declared insolvent by the California Department of Savings and Loan. The association was subsequently placed in receivership with the FSLIC on Friday, January 23, 1987. Approximately 160 unissued Time Certificate of Deposit forms are missing from the records of North America. Reportedly, during December 1986, several banks were solicited to grant loans secured by Time Certificate of Deposits issued by North America. Any institution having loans secured by a certificate of deposit or stock certificate issued by North America Savings and Loan Association

is encouraged to verify their collateral by calling William Davis, Chief Deputy Commissioner of the Department of Savings and Loan at (213) 736-2791.

A warning to cease and desist from doing business in California without the authority of the superintendent of banks was issued on February 6 to Central Trust Company in Costa Mesa. Central Trust is not authorized to transact business in the way or manner of a trust company and is not authorized to transact business under a name which contains the word "trust" and indicates the business is that of a trust company.

The Department has been advised of the operation of an entity known as "Credit Swiss Bank Corporation" on Wilshire Boulevard in Los Angeles. This corporation is not qualified to do business under the laws of California, nor has it any relation to Credit Suisse, Zurich, Switzerland, which maintains an office in Los Angeles.

Louis Carter. Superintendent of Banks Louis Carter died on February 17, 1987. Mr. Carter was appointed on May 2, 1983, and presided over the Banking Department during one of the most interesting and challenging times in recent memory. Pursuant to Financial Code section 235, Chief Deputy Superintendent of Banks Harold D. Doyle will administer the Department until a successor to Mr. Carter is appointed.

Computer Conference for Bankers. In conjunction with the Conference of State Bank Supervisors, the Department presented a "Computer Audit and Control Conference for Bankers" on February 16-19 at the Los Angeles Hilton. Announcements relating to the program were mailed to chief executive officers of both state and national banks. The conference is presented in many regions of the country on an annual basis, and is designed to provide bankers with the knowledge they need to effectively manage, audit, and control their bank's electronic data processing function. Recent advantages in bank automation, including on-line and remote processing, and the growing interest in mini and microcomputers, were discussed at the conference.

New Banks. Certificates of authority were issued to First Indo-American Bank in San Francisco; Manufacturer's Hanover Trust Company of California in San Francisco (to engage in limited banking business with trust powers); Stockton Commercial Bank in Stockton; and Bank of Petaluma in Sonoma.

Mergers. On November 5, 1986, Pacific Valley Bank in San Jose merged

with and into County Bank and Trust of Santa Cruz. On January 8, 1987, First Arroyo Bank in South Pasadena merged with and into First American Bank in Rosemead. On January 16, 1987, Huntington Bank in Arcadia merged with and into Chino Valley Bank in Chino, to operate all existing offices of Huntington Bank as offices of Chino Valley Bank. On January 27, 1987, the superintendent approved and effected the merger of Diablo Bank in Danville with and into Security Pacific National Bank in Los Angeles.

Acquisitions. First Interstate Bank of California in San Francisco filed its application to acquire the banking business of First Interstate Central Bank in Willows on December 19, 1986.

Bank Closings. On January 23, 1987, First Sierra Bank in Bishop was closed, and the insured deposits of First Sierra were transferred to Security Pacific National Bank in Los Angeles. At the close of business on January 23, 1987, the superintendent took possession of First Sierra and ordered that it be liquidated. The superintendent then tendered to the Federal Deposit Insurance Corporation the appointment as receiver of First Sierra, and the FDIC accepted the appointment. The FDIC transferred the insured deposits of First Sierra to Security Pacific in a deposit insurance transfer transaction. The transaction was approved by the superintendent and by the Inyo County Superior Court on the same day.

First Sierra maintained its head office in Bishop and a branch office in Mammoth Lakes. Security Pacific already maintained branch offices at both places and is servicing the transferred insured deposits at its existing branch offices. The FDIC is paying 55% advance liquidating dividends on the uninsured deposits of First Sierra.

LEGISLATION:

AB 852 (Bane) would repeal Chapter 10, Division 7 of the Financial Code, which currently provides for the regulation of mortgage bankers. The bill would also authorize a mortgage banker to bring an action for the recovery of damages, including exemplary damages not to exceed 50% of actual damages, against a borrower where the action is based on fraud, with specified exemptions. That action would not constitute a money judgment for deficiency, or a deficiency judgment.

AB 469 (Calderon) would authorize a commercial bank or savings association to own or control any insurer



which meets specified conditions and to participate as an underwriting member or as an investor in an underwriting member of any reciprocal or interinsurance exchange meeting specified criteria.

SB 296 (Vuich) would require banks to furnish depositors, if not physically present at the time of the initial deposit into an account, a statement concerning charges and interest not later than five legal business days after the initial deposit. With respect to an increase in the rate of account charges or a variance in the interest rate, the bill would alter the notice time from fifteen days prior to the date of change or variance to eleven legal business days.

DEPARTMENT OF CORPORATIONS

Commissioner: Franklin Tom
(916) 445-7205
(213) 736-2741

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:

Industrial Loan Law Regulation Changes. Effective January 1, 1987, section 1162 of the Department's regulations under the Industrial Loan Law have been amended to provide that any periodic payment which is more than twice the amount of any other periodic payment will be considered a balloon payment for purposes of section 18206 of the Financial Code. A consumer loan secured by a car, repayable in other than equal periodic payments, may have no more than one balloon payment during the term of the loan. Addition-

ally, the balloon payment cannot exceed the projected residual value of the car at the time the loan is made. The most recent issue of any residual value guide approved by the commissioner will prescribe the amount.

Escrow Law Regulation Changes. Section 1714.1 of Chapter 3, Title 10 of the California Administrative Code, relating to independent accountants, was recently amended. Financial statements must be prepared by an independent certified public accountant or independent public accountant. For the purpose of determining independence, the regulations of the California State Board of Accountancy will apply. (See CRLR Vol. 7, No. 1 (Winter 1987) p. 67 for background information.)

Proposed Regulation Changes. On February 11, the commissioner noticed a proposal to amend regulations under the Personal Property Brokers, Consumer Finance Lenders, and Commercial Finance Lenders Law.

Specifically, the commissioner proposes to amend Title 10 of the California Administrative Code, section 1489(b)(3), which presently provides that insurance on household goods may only be provided for a three-year period if the loan which is secured by the goods is for the same three-year period. Loans made to purchase household goods may be for longer terms, but insurance written on them is limited to the three-year period. Consequently, the commissioner proposes to authorize all insurance sold under subsection (b)(3) to be coextensive with the term of the loan and explicitly prohibit the sale of any insurance which exceeds the term of the loan.

The commissioner seeks written comments on the proposed amendment before May 5, 1987.

Enforcement. On December 12, 1986, the commissioner issued a desist and refrain order to Par Investments, Inc. (Par), prohibiting the offer and sale of unregulated franchises. Additionally, an order revoking the effectiveness of registration was issued to Par Investment Systems, Inc. (Par Systems), the franchisee of a business brokerage system originally developed by Par Investments, Inc.

Par is a Beverly Hills real estate broker currently involved in license revocation proceedings instituted by the Department of Real Estate. Par's president and others are alleged to have commingled and unlawfully converted trust funds. Par Systems applied for franchise registration to the Com-