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Business Associations and Professions

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Business Associations and Professions

Business Associations and Professions; attorneys—cessation of practice

Business and Professions Code §§ 6180.1, 6180.2, 6180.4, 6180.5, 6190.1, 6190.2, 6190.3 (amended).

SB 246 (Stirling); 1989 STAT. Ch. 582

Support: State Bar of California, Los Angeles County Bar, Litigation Section, San Diego County Bar Association; State Bar Discipline Monitor

Under existing law, if an attorney practicing law dies, resigns, or is disbarred or suspended, notice must be given to all parties affected by the cessation of the law practice.¹ Chapter 582 expands this requirement to include serving notice and any related applications or orders on the Office of the Chief Trial Counsel.²

Existing law provides that if an attorney is incapable of continuing to practice due to mental or physical illness, excessive use of drugs, or any other reason, then the court may take jurisdiction over the practice.³ Prior law required a local administrative committee or hearing panel to find that probable cause of the attorney's incapacity exists before any party could file an application requesting the court's assumption of jurisdiction.⁴ Chapter 582 removes this primary screening by the local administrative committee or hearing panel, but requires an applicant to include in the application the probable cause

1. CAL. BUS. & PROF. CODE § 6180 (West Supp. 1989) (amended by 1989 Cal. Stat. ch. 582, secs. 1, 3, 4, at ____).

2. 1989 Cal. Stat. ch. 582, sec. 1, at ____ (amending CAL. BUS. & PROF. CODE § 6180.1 (parties to be notified); *id.* sec. 3, at ____ (amending CAL. BUS. & PROF. CODE § 6180.4) (parties to receive copies of the application and order to show cause, and service of these materials); *id.* sec. 4, at ____ (amending CAL. BUS. & PROF. CODE § 6180.5). The State Bar may intervene and assume primary responsibility for conducting any action or proceeding at the cessation of an attorney's law practice. *Id.* sec. 2, at ____ (amending CAL. BUS. & PROF. CODE § 6180.5).

3. CAL. BUS. & PROF. CODE § 6190.

4. *Id.* § 6190.1 (amended by 1989 Cal. Stat. ch. 582, sec. 5, at ____).

basis for believing that the attorney is incapable of continuing to practice.⁵

Prior law permitted the attorney's clients, the State Bar, or any other interested party to submit an application requesting the court to assume jurisdiction over the attorney's practice.⁶ Under Chapter 582, a client or other interested party may request the court's assumption of jurisdiction only when the attorney consents to the application.⁷ Only the State Bar may submit an application without the attorney's consent.⁸

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5. 1989 Cal. Stat. ch. 582, sec. 5, at ____ (amending CAL. BUS. & PROF. CODE § 6190.1); *id.* sec. 2, at ____ (amending CAL. BUS. & PROF. CODE § 6190.2 (a)).

6. 1975 Cal. Stat. ch. 387, sec. 4, at 863 (amending CAL. BUS. & PROF. CODE § 6190.1) (amended by 1989 Cal. Stat. ch. 582, sec. 5, at ____).

7. 1989 Cal. Stat. ch. 582, sec. 5, at ____ (amending CAL. BUS. & PROF. CODE § 6190.1).

8. *Id.* An examiner appointed by the Chief Trial Counsel of the State Bar may conduct an investigation or formal proceeding on whether the state court should assume jurisdiction over the attorney's practice. *Id.*

Business Associations and Professions; business regulations

Business and Professions Code § 10008.5 (new); § 10133.1 (amended); Corporations Code §§ 183.5, 1201.5 (new); §§ 181, 903, 1203 (amended).

SB 1209 (Garamendi); 1989 STAT. Ch. 1116

(*Effective September 30, 1989*)

SB 1204 (Vuich); 1989 STAT. Ch. 1386

Existing Real Estate Law¹ regulates certain transactions involving business opportunities.² Chapter 1386 exempts licensed³ securities brokers and dealers from the Real Estate Law when they engage in transactions involving the sale, lease, or exchange of business op-

1. See CAL. BUS. & PROF. CODE § 10000 (West 1987) (short title for real estate licensing provisions).

2. See *id.* §§ 10000-10581 (West 1987 & Supp. 1989). A business opportunity includes "the sale or lease of the business and goodwill of an existing business enterprise or opportunity." *Id.* § 10030 (West 1987).

3. Chapter 1386 applies to securities brokers and securities dealers licensed under either California or federal law. 1989 Cal. Stat. ch. 1386, sec. 2, at ____ (amending CAL. BUS. & PROF. CODE § 10133.1(a)).

portunities.⁴ Chapter 1386 also exempts these brokers and dealers from the licensing provisions of the Real Estate Law when they engage in specified securities transactions.⁵

Under prior law, the requirements for an exchange reorganization⁶ were met when one corporation acquired shares of another corporation in exchange for equity securities⁷ of the acquiring corporation.⁸ Chapter 1116 adds the requirement that the acquiring corporation must gain control⁹ of the acquired corporation.¹⁰ This new requirement may reduce the availability of dissenter's rights to shareholders of the acquired corporation.¹¹

Under existing law, the principal terms of an exchange reorganization must be approved by the outstanding shares of each class in the acquiring corporation.¹² Similarly, under Chapter 1116, the principal terms of a share exchange tender offer¹³ must be approved by

4. 1989 Cal. Stat. ch. 1116, sec. 1, at ____ (enacting CAL. BUS. & PROF. CODE § 10008.5). Agents of licensed securities dealers and brokers are also exempt from the Real Estate Law when acting within the scope of their duties relating to these transactions. *Id.* Chapter 1116 does not apply to transactions intended to evade the licensing provisions of the Real Estate Law. *Id.*

5. 1989 Cal. Stat. ch. 1386, sec. 2, at ____ (amending CAL. BUS. & PROF. CODE § 10133.1(a)). Chapter 1386 exempts brokers and dealers from the real estate licensing provisions if the broker or dealer is involved in the offer, sale, purchase, or exchange of securities representing ownership interests in pools of promissory notes that are secured by real property liens, so long as these transactions are regulated by California or federal securities laws. *Id.* The exemptions enumerated are intended to eliminate duplicate licensing requirements by ensuring that licensed securities brokers and dealers are not required to obtain real estate brokers' licenses in order to engage in transactions involving business opportunities. 1989 Cal. Stat. ch. 1116, sec. 8, at ____ (statement of legislative intent).

6. *See* CAL. CORP. CODE § 181(b) (West Supp. 1989) (amended by 1989 Cal. Stat. ch. 1116, sec. 3, at ____) (definition of exchange reorganization of corporations).

7. *See id.* § 168 (West 1977) (definition of equity security).

8. *Id.* § 181(b) (West Supp. 1989) (amended by 1989 Cal. Stat. ch. 1116, sec. 3, at ____). Exchanging shares of the target corporation for equity securities of a corporation in control of the acquiring corporation would also satisfy the requirements for an exchange reorganization. *Id.* *See generally* Small, *Corporate Combinations under the New California General Corporation Law*, 23 UCLA L. REV. 1190 (1976) (overview of corporate reorganizations).

9. *See* CAL. CORP. CODE § 160(b) (West 1977) (control is ownership of shares representing more than 50% of the voting power).

10. 1989 Cal. Stat. ch. 1116, sec. 3, at ____ (amending CAL. CORP. CODE § 181). An identical control requirement was deleted from prior law in 1987. *See* 1987 Cal. Stat. ch. 627, sec. 1, at ____ *See also Review of Selected 1987 California Legislation*, 19 PAC. L.J. 471, 479 (1987) (analysis of 1987 Cal. Stat. ch. 627).

11. Generally, dissenter's rights attach in situations involving exchange reorganizations. *See* CAL. CORP. CODE § 1300 (West Supp. 1989). By imposing the control requirement, Chapter 1116 tightens requirements for an exchange reorganization and, correspondingly, appears to limit the situations where dissenter's rights can attach. *See* 1989 Cal. Stat. ch. 1116, sec. 3, at ____ (amending CAL. CORP. CODE § 181).

12. CAL. CORP. CODE §§ 1201(a), 1200(b) (West 1977 & Supp. 1989).

13. The difference between a share exchange tender offer and an exchange reorganization is that in a share exchange tender offer the acquiring corporation does not gain control of the target corporation. *Compare* 1989 Cal. Stat. ch. 1116, sec. 4, at ____ (enacting CAL. CORP.

the outstanding shares of each class in the offering corporation or in the corporation whose shares would be used in the tender offer.¹⁴

Prior law did not require a proposed amendment of the articles of incorporation to be approved by the outstanding shares if the amendment would increase the authorized number of shares pursuant to a stock split.¹⁵ Under Chapter 1116, an amendment that would effect a stock split, including an increase in the authorized number of shares, must be approved by the outstanding shares if there are more than one class of shares outstanding.¹⁶

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CODE § 183.5) (definition of share exchange tender offer) with CAL. CORP. CODE § 181(b) (West Supp. 1989) (definition of exchange reorganization).

14. 1989 Cal. Stat. ch. 1116, sec. 6, at ____ (enacting CAL. CORP. CODE § 1201.5). When the rights of preferred shareholders would not be affected, approval by the preferred class is not required. *Id.* Shareholder approval is not required if the shareholders of the offering corporation, or of the corporation whose shares will be used in the tender offer, will hold immediately after the proposed exchange, non-warrant equity securities constituting five-sixths of the voting power of either the offering corporation or the corporation whose shares will be offered. *Id.* These exceptions are similar to the exceptions to voting requirements in exchange reorganizations. *Compare id.* with CAL. CORP. CODE § 1201(b) (West Supp. 1989) (requirements of exchange reorganizations).

15. CAL. CORP. CODE § 903(a)(1) (amended by 1989 Cal. Stat. ch. 1116, sec. 5, at ____).

16. 1989 Cal. Stat. ch. 1116, sec. 5, at ____ (amending CAL. CORP. CODE § 903); CAL. CORP. CODE § 902(c) (West Supp. 1989).

Business Associations and Professions; clinical laboratories— direct requests for laboratory tests

Business and Professions Code § 1246.5 (new).
AB 650 (Polanco); 1989 STAT. CH. 1236

Under existing law, clinical laboratories¹ can accept assignments for tests only from licensed medical professionals.² Chapter 1236 creates an exception whereby a private individual can request a test for pregnancy, glucose level, cholesterol level, and occult blood if the test relates to that person's own body.³

1. See CAL. BUS. & PROF. CODE § 1206(a)(3) (Deering Supp. 1989) (definition of clinical laboratory).

2. *Id.* § 1288 (Deering 1986).

3. 1989 Cal. Stat. ch. 1236, sec. 2, at ____ enacting CAL. BUS. & PROF. CODE § 1246.5).

The legislature's purpose in enacting Chapter 1236 is to promote health consciousness through expanded access to high quality testing.⁴ Chapter 1236 permits the Director of the State Department of Health Services⁵ to add other tests to the list of those available upon private person's request, but specifies that the Director may do so only if the federal Food and Drug Administration has approved the sale of an over-the-counter kit for each additional test.⁶

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4. *Id.* sec. 1, at _____. See generally J. TODD, CLINICAL DIAGNOSIS BY LABORATORY METHODS (15th ed. 1974) (technical description of the purposes and techniques of clinical laboratory examinations).

5. See CAL. BUS. & PROF. CODE § 1202 (Deering 1986) (definition of Department as the State Department of Health Services).

6. 1989 Cal. Stat. ch. 1236, sec. 2, at _____. (enacting CAL. BUS. & PROF. CODE § 1246.5).

Business Associations and Professions; cumulative voting and classified boards

Business and Professions Code § 301.5 (new); §§ 301, 303, 708 (amended).

AB 1929 (Epple); 1989 STAT. CH. 534

Support: State Bar of California

Opposition: Attorney General

Under existing law, shareholders of a corporation subject to the General Corporation Law¹ are entitled to use cumulative voting when electing directors.² Chapter 534 permits a listed corporation³ to eliminate cumulative voting by amending its articles of incorporation or bylaws.⁴ An amendment eliminating cumulative voting must be ap-

1. See generally CAL. CORP. CODE §§ 100-14182 (West 1977 and Supp. 1989) (General Corporation Law).

2. CAL. CORP. CODE § 301(a) (amended by 1989 Cal. Stat. ch. 534, sec. 1, at ____).

3. A listed corporation is a corporation listed on a national securities exchange or a corporation with at least 800 equity shareholders that is qualified for trading on the National Association of Securities Dealers Automatic Quotation System (NASDAQ). 1989 Cal. Stat. ch. 534, sec. 2, at ____ (enacting CAL. CORP. CODE § 301.5(d)). See *id.* (enacting CAL. CORP. CODE § 301.5(d)(2) (determination of number of shareholders)).

4. *Id.* (enacting CAL. CORP. CODE § 301.5(a)).

proved by the board of directors and the outstanding shares⁵ voting as a single class.⁶

Prior law did not provide for staggered or classified boards of directors.⁷ Chapter 534 allows a listed corporation to divide its board of directors into two or three classes.⁸ There must be at least three directors in each class.⁹ The total number of authorized directors must be as evenly divided between the classes as possible.¹⁰ If the board is divided into two classes, each director must have a two-year term; if there are three classes, the directors must have three-year terms.¹¹ One class of directors must be elected at each annual shareholders' meeting.¹² If more than one class is to be elected at a single meeting where cumulative voting is used, the votes can be cumulated only within each class.¹³ Chapter 534 also permits a non-listed corporation to adopt amendments to its articles that eliminate cumulative voting or establish a classified board; however, these amendments will not become effective unless and until the corporation is listed.¹⁴ An amendment that creates a classified board must be approved by the board of directors and the outstanding shares voting as a single class.¹⁵

Existing law does not permit the removal of a director if the number of dissenting votes¹⁶ are sufficient to elect that director under cumulative voting.¹⁷ Chapter 534 enacts a similar provision to govern the removal of a director from a classified board.¹⁸

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5. See CAL. CORP. CODE § 152 (West 1977) (defining approval by the outstanding shares). Cf. Id. § 153 (West Supp. 1989) (defining approval by the shareholders).

6. 1989 Cal. Stat. ch. 534, sec. 2, at ____ (enacting CAL. CORP. CODE § 301.5(a)).

7. 1988 Cal. Stat. ch. 495, sec. 2, at ____ (amending CAL. CORP. CODE § 301(a)) (amended by 1989 Cal. Stat. ch. 534, sec. 2 at ____).

8. 1989 Cal. Stat. ch. 534, sec. 2, at ____ (enacting CAL. CORP. CODE § 301.5(a)). Compare *id.* with DEL. CODE ANN. tit. 8, § 141(d) (1988) (providing for classified boards) and REV. MODEL BUSINESS CORP. ACT § 8.06 (staggered terms for directors).

9. 1989 Cal. Stat. ch. 534, sec. 2, at ____ (enacting CAL. CORP. CODE § 301.5(b)).

10. *Id.*

11. *Id.* Directors may be elected by class at a shareholder's meeting that approves an amendment to the articles or bylaws which permits classification of the board. *Id.*

12. *Id.*

13. *Id.* (enacting CAL. CORP. CODE § 301.5(c)).

14. *Id.* (enacting CAL. CORP. CODE § 305.1(c)).

15. 1989 Cal. Stat. ch. 534, sec. 2, at ____ (enacting CAL. CORP. CODE § 301.5(a)).

16. For purposes of this analysis, dissenting votes are votes either opposed to, or not giving written consent to, the removal of the director. See CAL. CORP. CODE § 303(a)(1) (amended by 1989 Cal. Stat. ch. 534, sec. 3, at ____).

17. *Id.*

18. 1989 Cal. Stat. ch. 534, sec. 3, at ____ enacting CAL. CORP. CODE § 303(a)(3)). A director on a classified board cannot be removed if the dissenting votes would have been

sufficient to elect that director had the removal attempt been an election for the greater of either: (a) The number of directors elected at the last annual meeting or (b) the number of directors for whom removal is sought. *Id.* This provision applies even if cumulative voting is not otherwise permitted. *Id.*

Business Associations and Professions; drug and alcohol treatment and recovery facilities—licensing and taxation

Health and Safety Code §§ 11830, 11831, 11834.19 (new); §§ 1505, 11830.5, 11831.5, 11833, 11834, 11834.10, 11834.11, 11834.12, 11834.14, 11834.17, 11834.18, 11834.20, 11834.21, 11834.22, 11834.23, 11834.24, 11834.25, 11834.30, 11834.35 (amended); Revenue and Taxation Code § 6363.6 (amended).

SB 990 (Watson); 1989 STAT. CH. 919

Support: California Association of County Drug Program Administrators, County Alcohol Program Administrators Association of California, State Advisory Board on Alcohol Related Problems

Opposition: California Association of Alcoholic Recovery Homes

Under prior law, the State Department of Social Services licensed residential alcohol and drug treatment and recovery facilities as community care facilities.¹ The Department of Alcohol and Drug Programs set minimum treatment standards for these facilities licensed by the State Department of Social Services.² Chapter 919 removes residential drug and alcohol treatment and recovery facilities from the jurisdiction of the Department of Social Services.³ Under Chapter 919, all persons operating an alcohol or drug abuse recovery or treatment facility must be licensed by the Department of Alcohol and Drug Programs.⁴

1. 1987 Cal. Stat. ch. 1409, sec. 1, at 218 (amending CAL. HEALTH & SAFETY CODE § 1505(j)) (exclusions from consideration as community care facilities). *See* CAL. HEALTH & SAFETY CODE § 1502(a) (defining community care facility).

2. 1984 Cal. Stat. ch. 1667, sec. 4, at 240 (amending CAL. HEALTH & SAFETY CODE § 11830.5) (amended by 1989 Cal. Stat. ch. 919, sec. 3, at ____).

3. 1989 Cal. Stat. ch. 919, sec. 1, at ____ (amending CAL. HEALTH & SAFETY CODE § 1505(j)).

4. *Id.* sec. 8, at ____ (amending CAL. HEALTH & SAFETY CODE § 11834.10) (adds exclusive authority to license drug abuse recovery and treatment facilities and alcohol treatment facilities); *id.* sec. 10, at ____ (amending CAL. HEALTH & SAFETY CODE § 11834.12) (adds drug abuse recovery and treatment facilities and alcohol treatment facilities to those facilities required to have a current license from the Department of Alcohol and Drug Programs); *id.* sec. 14, at .

Under Chapter 919, alcoholism or drug abuse recovery or treatment programs that serve six or fewer people are exempt from business taxes, local registration fees, use permit fees or any other fees for which single-family dwellings are not liable.⁵ Gross receipts from the sale of food and meals to patients and residents of drug abuse recovery or treatment facilities are exempt from taxation.⁶

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____ (enacting CAL. HEALTH & SAFETY CODE § 11834.19) (requires the Department of Alcohol and Drug Programs to license alcoholism and drug abuse recovery and treatment facilities). The Department of Alcohol and Drug Programs, in consultation with the State Advisory Board on Alcohol-Related Problems and county drug and alcohol program administrators, must establish certification criteria for each type of treatment facility. *Id.* sec. 3, at ____ (amending CAL. HEALTH & SAFETY CODE § 11830.5). Certification may be granted to any program that substantially complies with the Department's standards. *Id.* sec. 5, at ____ (amending CAL. HEALTH & SAFETY CODE § 11831.5(c)). Certification is to assure the public and third parties bearing the cost of a patient's treatment that the program meets minimum standards. *Id.* (amending CAL. HEALTH & SAFETY CODE § 11831.5(b)). Certification does not reflect the department's approval or disapproval of the program. *Id.* (amending CAL. HEALTH & SAFETY CODE § 11831.5(e)).

5. *Id.* sec. 17, at ____ (amending CAL. HEALTH & SAFETY CODE § 11834.22). These facilities are considered a family unit for the purposes of zoning and local ordinances. CAL. HEALTH & SAFETY CODE § 11834.23 (amended by 1989 Cal. Stat. ch. 919, sec. 18, at ____).

6. 1989 Cal. Stat. ch. 919, sec. 23, at ____ (amending CAL. REV. & TAX. CODE § 6363.6(e)).

Business Associations and Professions; Employment Agency and Job Listing Services Act

Business and Professions Code §§ 9900, 9901, 9902, 9902.5, 9902.6, 9902.7, 9902.8, 9903, 9904, 9905, 9906, 9907, 9908, 9908.5, 9908.7, 9909, 9909.5, 9909.6, 9910, 9911, 9912, 9912.5, 9913, 9914, 9920, 9921, 9922, 9924, 9925, 9926, 9927, 9928, 9929, 9930, 9931, 9932, 9933, 9934, 9935, 9940, 9941, 9942, 9943, 9944, 9946, 9946.1, 9947, 9948, 9949, 9950, 9950.1, 9951, 9952, 9953, 9953.1, 9954, 9955, 9956, 9958, 9958.2, 9958.3, 9958.4, 9958.5, 9958.6, 9958.7, 9958.8, 9958.9, 9958.10, 9958.11, 9960, 9960.1, 9961, 9962, 9963, 9965, 9965.1, 9965.2, 9965.3, 9965.4, 9965.5, 9965.6, 9965.7, 9965.8, 9965.9, 9965.10, 9970, 9971, 9972, 9973, 9974, 9974.1, 9974.3, 9974.5, 9974.7, 9974.9, 9975, 9975.1, 9977, 9978, 9979, 9980, 9981, 9982, 9983, 9984, 9984.1, 9984.5, 9985, 9986, 9987, 9988, 9988.1, 9988.2, 9988.4, 9989, 9989.1, 9989.2, 9989.3, 9989.4, 9989.5, 9989.6, 9989.7, 9989.8, 9989.9, 9989.10, 9990, 9991, 9992, 9993, 9994, 9995, 9997, 9997.1, 9998, 9998.1, 9998.2, 9998.3, 9998.4, 9998.5, 9998.6, 9998.7, 9998.8 (repealed); Civil Code §§ 1812.500, 1812.501, 1812.502, 1812.503, 1812.504, 1812.505, 1812.506, 1812.507, 1812.508, 1812.509, 1812.510, 1812.511, 1812.512, 1812.513, 1812.515, 1812.516, 1812.517, 1812.518, 1812.519, 1812.520, 1812.521, 1812.522, 1812.523, 1812.524, 1812.525, 1812.526, 1812.527, 1812.528, 1812.529, 1812.530, 1812.531, 1812.532, 1812.533 (new).

AB 2113 (Johnson); 1989 STAT. Ch. 704

Under prior law, the Employment Agency Act established the Bureau of Personal Services (Bureau).¹ The Bureau was responsible for regulating and licensing various employment agencies.² Chapter 704 completely repeals the Employment Agency Act and dissolves the Bureau.³

1. 1984 Cal. Stat. ch. 324, sec. 3, at 1583 (amending CAL. BUS. & PROF. CODE § 9920) (repealed by 1989 Cal. Stat. ch. 704, sec. 1, at ____).

2. 1967 Cal. Stat. ch. 1505, sec. 1, at 3557 (enacting CAL. BUS. & PROF. CODE § 9940) (repealed by 1989 Cal. Stat. ch. 704, sec. 1, at ____) (licensing requirement for various employment agencies). The Bureau regulated general employment agencies as well as those specializing in babysitting, domestic employment, modeling, farm labor, nurses' registries, employment counseling, computer employment agencies, and job listing services. 1967 Cal. Stat. ch. 1505, sec. 1, at 3562 (enacting CAL. BUS. & PROF. CODE § 9941) (repealed by 1989 Cal. Stat. ch. 704, sec. 1, at ____).

3. 1989 Cal. Stat. ch. 704, sec. 1, at ____ (repealing CAL. BUS. & PROF. CODE §§ 9900-9997.1).

Chapter 704 establishes the Employment Agency and Job Listing Services Act.⁴ Chapter 704 requires all employment agencies,⁵ employment counseling services,⁶ and job listing services⁷ to maintain a surety bond and to deposit a copy of it with the Secretary of State before doing business.⁸ Chapter 704 requires these entities to execute a written contract with any jobseeker⁹ they represent.¹⁰ The terms of the contract are strictly regulated.¹¹

All contracts between an employment agency and a jobseeker must contain a refund clause.¹² All contracts between an employment counseling service and a jobseeker must contain a cancellation clause.¹³ All contracts entered into between a job listing service and a jobseeker must contain both a cancellation clause and a refund clause.¹⁴ Chapter 704 specifically sets forth the language that must be used in these clauses.¹⁵

4. *Id.* sec. 2, at ____ (enacting CAL. CIV. CODE § 1812.500).

5. *See* 1989 Cal. Stat. ch. 704, sec. 2, at ____ (enacting CAL. CIV. CODE § 1812.501(a) (definition of employment agency)).

6. *See id.* (enacting CAL. CIV. CODE § 1812.501(b)) (definition of employment counseling service).

7. *See id.* (enacting CAL. CIV. CODE § 1812.501(c)) (definition of job listing service).

8. *Id.* (enacting CAL. CIV. CODE §§ 1812.503(a), 1812.510(a), 1812.515(a)). Employment agencies must deposit a \$3000 bond, employment counseling services must deposit a \$10,000 bond, and job listing services must deposit a \$10,000 bond. *Id.*

9. *See id.* (enacting CAL. CIV. CODE § 1812.501(e)) (definition of jobseeker).

10. *Id.* (enacting CAL. CIV. CODE §§ 1812.504(a), 1812.511(a), 1812.516(a)) (requiring written contracts for employment agencies, employment counseling services, and job listing services).

11. *Id.* (enacting CAL. CIVIL CODE §§ 1812.504(a)(1)-(11), 1812.511(a)-(c), 1812.516(a)-(c)). Chapter 704 requires every contract between a jobseeker and one of these entities to contain a description of the services the entity will provide. *Id.* (enacting CAL. CIV. CODE §§ 1812.504(a)(4), 1812.511(a)(3), 1812.516(a)(3)). Chapter 704 also requires all fee arrangements to be set forth in the contract. *Id.* (enacting CAL. CIV. CODE §§ 1812.504(a)(5), 1812.511(a)(4), 1812.516(a)(2)). Chapter 704 requires the full agreement of the parties, including all of the required terms, to be expressed in a single writing. *Id.* (enacting CAL. CIV. CODE §§ 1812.504(c), 1812.511(c), 1812.516(c)).

12. *Id.* (enacting CAL. CIV. CODE § 1812.504(a)(11)). Generally, a refund must be given if the jobseeker fails to accept employment. *Id.* If the jobseeker leaves employment for just cause, or is discharged for reasons other than misconduct, the employment agency must refund any amount paid in excess of what they would have charged an individual for temporary employment. *Id.*

13. *Id.* (enacting CAL. CIV. CODE § 1812.511(a)(6)). The cancellation clause permits a jobseeker to cancel the contract with the counseling service up to three business days after entering the contract. *Id.*

14. *Id.* (enacting CAL. CIV. CODE § 1812.516(a)(6), (7)). The refund clause provides for a full refund if, within the first seven days after entering into the contract, the job listing service does not supply the jobseeker with at least three available jobs that meet the jobseeker's employment specifications. *Id.* (enacting CAL. CIV. CODE § 1812.516(a)(7)). If the jobseeker does not obtain a job through the job listing service, or if the job obtained lasts less than 90 days, the jobseeker is entitled to a refund of all amount paid to the service in excess of \$25. *Id.*

15. *Id.* (enacting CAL. CIV. CODE §§ 1812.504(a)(11), 1812.511(a)(6), 1812.516(a)(6), (7)).

Under Chapter 704, employment agencies, employment counseling services, and job listing services must keep records of their transactions, which must be available for inspection by the attorney general and district and city attorneys.¹⁶

Chapter 704 also regulates the operation of nurses' registries.¹⁷ Under Chapter 704, all contracts entered into by a nurses' registry must contain certain statutorily required terms.¹⁸ The nurses' registry must provide a full refund if the jobseeker fails to obtain a job assignment.¹⁹ The violation of any provision in Chapter 704 is a misdemeanor.²⁰

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16. *Id.* (enacting CAL. CIV. CODE § 1812.522).

17. *Id.* (enacting CAL. CIV. CODE § 1812.525). *See id.* (enacting CAL. CIV. CODE § 1812.524(b)) (definition of nurses' registry).

18. *Id.* (enacting CAL. CIV. CODE § 1812.526(a)-(f)) (required contract terms).

19. *Id.* (enacting CAL. CIV. CODE § 1812.532).

20. *Id.* (enacting CAL. CIV. CODE § 1812.523(a)).

Business Associations and Professions; financial institutions— variable interest rate loans

Civil Code § 1916.5 (amended).

AB 438 (Lancaster); 1989 STAT. CH. 188

Sponsor: California Bankers Association

Existing law regulates the making of variable interest rate loans¹ used to purchase or construct real property that contains four or fewer residential units.² Chapter 188 eliminates banks, savings and loan associations, credit unions, and other supervised financial organizations from these provisions.³

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1. CAL. CIV. CODE § 1916.5 (West 1985) (requirements for variable interest rate loans). *See generally* Rabin & Brodie, *Usury Law in California: A Guide through the Maze*, 20 U.C. DAVIS L. REV. 397 (1987) (a comprehensive analysis of California regulation of variable interest rate loans).

2. CAL. CIV. CODE § 1916.5(a) (regulating interest rate provisions for variable rate loans).

3. 1989 Cal. Stat. ch. 188, sec. 1, at ____ (amending CAL. CIV. CODE § 1916.5). Supervised financial organizations are: banks, savings associations, credit associations, credit unions, industrial loan companies, personal property brokers, consumer finance lenders, holding companies, and institutions of the Farm Credit System as specified by United States Code, title 12, section 2002. *Id.*

**Business Associations and Professions; financial institutions—
transmission of funds to foreign countries**

Financial Code §§ 1801, 1803.5 (repealed and new); 1800, 1800.4, 1800.7, 1800.9, 1801.1, 1803, 1804, 1805, 1805.5, 1814, 1815, 1827 (new); Cal. Penal Code § 500 (new); 1800, 1800.5, 1802, 1803, 1803.5, 1804, 1805, 1807, 1808, 1809, 1819, 1823, 1826 (amended). AB 1461 (Polanco); 1989 STAT. CH. 1196

Under existing law, persons engaged in the business of receiving money for transmission to foreign countries must be licensed by the Superintendent of Banks (Superintendent).¹ Existing law exempts banks,² trust companies, foreign banks, and incorporated telegraph companies from these licensing requirements.³

Chapter 1196 requires that banks must be insured by a federal insurance agency⁴ in order to maintain their license exemption.⁵ Chapter 1196 also requires incorporated telegraph companies to meet specified requirements in order to maintain their exemption from the licensing provisions.⁶ Chapter 1196 exempts trust companies, savings and federal associations,⁷ insured federal or state chartered credit unions, and industrial loan companies from the licensing requirements.⁸

Chapter 1196 requires contracts between a licensee⁹ and an agent authorized to receive transmission money on behalf of the licensee

1. CAL. FIN. CODE § 1800 (West 1989). *See id.* § 210 (status and qualifications of the Superintendent).

2. *See id.* § 109 (definition of bank).

3. *Id.* § 1800. Incorporated telegraph companies that immediately transmit money from a regular office are exempt from the licensing requirements. *Id.*

4. Bank deposits must be insured by the Federal Deposit Insurance Corporation or its successor. 1989 Cal. Stat. ch. 1196, sec. 1, at ____ (enacting and amending CAL. FIN. CODE § 1800.3(b)(1)).

5. *Id.*

6. *Id.* sec. 3, at ____ (enacting CAL. FIN. CODE § 1800.4(a)). Incorporated telegraph companies are exempt until July 1, 1990 if the following criteria are satisfied: (1) The company has applied to the Superintendent for licensure before February 1, 1990; (2) the company is subject to all requirements of Chapter 1196; and (3) the company received money for immediate transfer before February 2, 1989. *Id.*

7. *See* CAL. FIN. CODE § 5102 (West 1989) (definitions of association, savings association, and federal association).

8. 1989 Cal. Stat. ch. 1196, sec. 1, at ____ (enacting and amending CAL. FIN. CODE § 1800.3(b)). *See* CAL. FIN. CODE § 401 (West 1989) (definition of trust company). *See id.* §§ 5102(a) (definition of savings association), 18003 (definition of industrial loan company).

9. *See* 1989 Cal. Stat. ch. 1196, sec. 4, at ____ (amending CAL. FIN. CODE § 1800.5(d)) (definition of licensee).

to be in writing.¹⁰ The agent must be approved by the Superintendent before acting on behalf of a licensee.¹¹ Chapter 1196 prohibits an agent from appointing a subagent to receive transmission money.¹²

Chapter 1196 prohibits a person from acquiring control¹³ of a licensee without prior approval by the Superintendent.¹⁴ Chapter 1196 authorizes the Superintendent to seek equitable relief to prevent or end a violation of Chapter 1196.¹⁵

Under Chapter 1196, a licensee must obtain the approval of the Superintendent before establishing a branch office.¹⁶ A licensee must also notify the Superintendent and the public at least 60 days before relocating a branch office.¹⁷

Existing law requires a licensee or its agent to forward all funds received for transmission within ten days of receipt, unless the customer has ordered otherwise.¹⁸ Chapter 1196 requires a licensee

10. *Id.* sec. 12, at ____ (enacting CAL. FIN. CODE § 1803). The contract must contain the following: (1) A statement that the licensee appoints the agent to receive funds on the licensee's behalf; (2) a requirement that the agent maintain all records as required by the Superintendent of Banks; and (3) a requirement that all funds held for transfer, less express fees due agents, are held in trust until delivery abroad. *Id.*

11. *Id.* sec. 15, at ____ (enacting CAL. FIN. CODE § 1803.5(a)). Any person appointed as an agent before February 1, 1989, may continue to act as an agent if the Superintendent is notified of the agent's appointment. *Id.* The Superintendent may issue an order suspending or revoking an agent appointed before February 1, 1989. *Id.* (enacting CAL. FIN. CODE § 1800.5(d)). Any agent who has been with an incorporated telegraph company of more than 1000 agents for more than five years prior to February 1, 1989 may continue to act as an agent without an original appointment under Chapter 1196. *Id.* (enacting CAL. FIN. CODE § 1803.5(b)). The Superintendent may disapprove an application for the appointment of an agent if a licensee's financial condition is unsound or the agent is incompetent. *Id.* (enacting CAL. FIN. CODE § 1803.5(d)). The superintendent may revoke or suspend an agent's appointment if the agent conducts business in an unsafe manner or violates the provisions of Chapter 1196. *Id.* (enacting CAL. FIN. CODE § 1803.5(g)). If an agent's application is not denied by the Superintendent within 45 days, the application is considered approved. *Id.* (enacting CAL. FIN. CODE § 1803.5(d)).

12. *Id.* (enacting CAL. FIN. CODE § 1803.5(e)).

13. *See* CAL. FIN. CODE § 700 (West 1989) (definition of control).

14. 1989 Cal. Stat. ch. 1196, sec. 17, at ____ (enacting CAL. FIN. CODE § 1804(a)). Before granting approval, the Superintendent must find that: (1) The applicant for approval, and its officers and directors, are financially sound; (2) the applicant is competent to receive money for transmission; (3) the applicant is reasonably likely to comply with all applicable provisions of Chapter 1196; and (4) any intended major changes in the business are not detrimental to the licensee. *Id.* (enacting CAL. FIN. CODE § 1804(b)).

15. *Id.* (enacting CAL. FIN. CODE § 1804(e)). The Superintendent may act in the interest of the licensee, controlling person, or the public. *Id.*

16. *Id.* sec. 19, at ____ (enacting CAL. FIN. CODE § 1805(b)). *See* CAL. FIN. CODE § 1805(a) (West 1989) (definition of branch office). The Superintendent must deny an application for a branch office if the licensee's or agent's financial condition is unsound. *Id.* § 1805(d).

17. 1989 Cal. Stat. ch. 1196, sec. 20, at ____ (enacting CAL. FIN. CODE § 1805.5) (requirements for notice prior to relocation).

18. CAL. FIN. CODE § 1810 (West 1989).

or its agent to refund, within ten days of the customer's written request, all funds not committed for delivery.¹⁹

The licensee must provide customers with a receipt that clearly states the rate of exchange for the transaction, the amount of commission charged, and the net exchange rate after the deduction of all fees and commissions.²⁰ The receipt must be in English and the language principally used to advertise, solicit, or negotiate the transaction.²¹

Chapter 1196 requires all licensees to maintain a minimum tangible shareholder equity²² of \$250,000.²³ Individuals licensed before January 1, 1990, are not subject to this requirement until January 1, 1991.²⁴

Violation of Chapter 1196 is punishable by a fine not to exceed \$50,000, imprisonment for not more than one year, or both.²⁵ Any person who receives funds for transfer to a foreign country and fails to forward them as requested, or fails to provide a refund as required, is also guilty of a crime.²⁶

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19. 1989 Cal. Stat. ch. 1196, sec. 24, at ____ (enacting CAL. FIN. CODE § 1810.5(a)). A licensee is not required to refund funds if the funds have been forwarded or instructions have been given committing an equivalent amount of money to a person designated by the customer. *Id.*

20. 1989 Cal. Stat. ch. 1196, sec. 26, at ____ (enacting CAL. FIN. CODE § 1815(a)). Chapter 1196 requires that all exterior signs concerning the rates of exchange clearly show exchange rates in both English and in the language principally used in any oral negotiation or presentation. *Id.* (enacting CAL. FIN. CODE § 1815(b)). All interior signs must clearly state the rates of exchange for currency and all commissions and fees to be charged. *Id.* The licensee or agent must disclose the exchange rates in both English and the language they principally use to advertise, solicit, or negotiate the transmission of funds. *Id.* (enacting CAL. FIN. CODE § 1815(c)).

21. *Id.* sec. 24, at ____ (enacting CAL. FIN. CODE § 1810.5(b)). The receipt must include a specific statement describing the customer's rights regarding the transfer and the possible refund of funds. *Id.*

22. *See id.* sec. 25, at ____ (enacting CAL. FIN. CODE § 1814(b))(definition of tangible shareholder equity).

23. *Id.* (enacting CAL. FIN. CODE § 1814(a)). The Superintendent may establish an adequate tangible shareholder equity in excess of \$250,000. *Id.*

24. *Id.* (enacting CAL. FIN. CODE § 1814(c)).

25. *Id.* sec. 28, at ____ (amending CAL. FIN. CODE § 1823).

26. *Id.* sec. 33, at ____ (enacting CAL. PENAL CODE § 500). Failing to forward less than \$400 is punishable by imprisonment in the county jail for up to one year, by a fine of up to \$1000, or both. *Id.* (enacting CAL. PENAL CODE § 500(b)). If the funds are \$400 or more, or if an aggregate of funds from different customers is \$400 or more, a violation is punishable by imprisonment in the state prison for 16 months to three years, by a fine of up to \$10,000, or both. *Id.*

Business Associations and Professions; forfeiture of loan fees

Financial Code §§ 22651, 22652, 24651, 24652, 26050 (amended);
§§ 22650, 24650 (new).

SB 1182 (Boatwright); 1989 STAT. CH. 867

Support: California Financial Services Association

Under prior law, if a personal property broker¹ or consumer finance lender² charged impermissible fees,³ or violated any licensing provisions when making or collecting on a loan, the contract was void.⁴

Chapter 867 provides that a loan contract is void if the broker or lender *willfully* charges impermissible fees,⁵ or if the broker or lender *willfully* violates its licensing provisions.⁶ If the impermissible charge or the licensing violation was not willful, the broker or lender forfeits

1. See CAL. FIN. CODE § 22009 (West 1981) (personal property broker includes any person engaged in lending money who takes personal property or an assignment of wages as collateral).

2. See *id.* § 24009 (West Supp. 1989) (consumer finance lender includes any person engaged in making consumer loans).

3. Impermissible fees are any fees that violate any provisions of the California Financial Code Division 9 (sections 22000 to 22654 regulating personal property brokers) or Division 10 (sections 24000 to 24654 regulating the making of small loans). CAL. FIN. CODE §§ 22651 (West 1981) (amended by 1989 Cal. Stat. ch. 867, sec. 2, at ____), 24650 (West 1981) (amended by 1989 Cal. Stat. ch. 867, sec. 4, at ____).

4. 1980 Cal. Stat. ch. 935, sec. 2, at 2962 (amending CAL. FIN. CODE § 22651(a)) (amended by 1989 Cal. Stat. ch. 867, sec. 2, at ____), 1981 Cal. Stat. ch. 724, sec. 10, at 2841 (enacting CAL. FIN. CODE § 24651(a)) (amended by 1989 Cal. Stat. ch. 867, sec. 5, at ____). An exception was made if the charges were the result of an unintentional error, the lender employed reasonable procedures to avoid such errors, and the error was corrected within 15 days of discovery. CAL. FIN. CODE §§ 22652(b) (West 1981) (amended by 1989 Cal. Stat. ch. 867, sec. 3, at ____), 24652(b) (West Supp. 1989) (amended by 1989 Cal. Stat. ch. 867, sec. 6, at ____). See *People v. Vanderpool*, 20 Cal. 2d 746, 749-750, 128 P.2d 513, 515 (1942) (the purpose of small loan regulation is to protect the public from lenders who would take advantage of the needy). See also *In re Fuller*, 15 Cal. 2d 425, 102 P.2d 321 (1940) (people with poor credit are more susceptible to those lenders who would charge excessive rates).

5. Impermissible fees are any fees other than those allowed under California Financial Code sections 22000 to 22654 (regulation of personal property brokers). CAL. FIN. CODE § 22651(a) (West 1981) (amended by 1989 Cal. Stat. ch. 867, sec. 2, at ____). Some of these impermissible fees include charges made without making the loan (Financial Code section 22450.1), maximum charges (*id.* section 22451), alternate charges (*id.* section 22451.1), administrative fees (*id.* section 22451.3), appraisal fees (*id.* section 22458.4), escrow fees (*id.* section 22458.5), fees for reconveyance of a trust deed (*id.* section 22458.6), fees for bounced checks (*id.* section 22458.7), precomputed fees on installment loan contracts (*id.* section 22480), and authorized charges on open end credit (*id.* section 22502).

6. 1989 Cal. Stat. ch. 867, sec. 1, at ____ (enacting CAL. FIN. CODE § 22650); *id.* sec. 4, at ____ (enacting CAL. FIN. CODE § 24650). See CAL. FIN. CODE §§ 22200-22212 (West 1981 & Supp. 1989) (provisions governing licensing of personal property brokers), 24200-24212 (provisions governing licensing of consumer finance lenders).

the interest and other charges, but may still collect the principal.⁷ If the licensing violation was not willful, and the error is corrected within thirty days of discovery, the interest and charges are not forfeited.⁸ Chapter 867 does not apply to persons who make only one commercial loan in any twelve-month period.⁹

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7. CAL. FIN. CODE §§ 22651 (amended by 1989 Cal. Stat. ch. 867, sec. 2, at ____), 24651 (West Supp. 1989) (amended by 1989 Cal. Stat. ch. 867, sec. 5, at ____).

8. *Id.* §§ 22652 (West 1981) (amended by 1989 Cal. Stat. ch. 867, sec. 3, at ____), 24652 (West Supp. 1989) (amended by 1989 Cal. Stat. ch. 867, sec. 6, at ____). Brokers and lenders are allowed 60 days to correct computational errors without penalty. *Id.* §§ 22651 (West 1981) (amended by 1989 Cal. Stat. ch. 867, sec. 2, at ____), 24651 (West Supp. 1989) (amended by 1989 Cal. Stat. ch. 867, sec. 5, at ____).

9. 1989 Cal. Stat. ch. 867, sec. 7, at ____ (enacting CAL. FIN. CODE § 22650).

Business Associations and Professions; interference with licensing examinations

Business and Professions Code § 496 (repealed); § 123 (new); §§ 497, 584 (amended).

AB 1729 (Chandler); 1989 STAT. CH. 1022

Existing law prohibits a person from disturbing the security procedures of a licensing examination.¹ Chapter 1022 makes it a misdemeanor to interfere in any way with the administration of a licensing examination.² Conduct which interferes with a licensing examination is grounds for a licensing board to deny or restrict the

1. CAL. BUS. & PROF. CODE § 584 (amended by 1989 Cal. Stat. ch. 1022, sec. 5, at ____). It is unlawful to impersonate another or to permit another to take the examination in your place. *Id.* See, e.g., *In re Lamb*, 49 Cal. 3d 239, 249, 776 P.2d 765, 770, 260 Cal. Rptr. 856, 361 (1989) (upholding the California State Bar's disbarment recommendation for an attorney who took the bar examination for her husband).

2. 1989 Cal. Stat. ch. 1022, sec. 1, at ____ (enacting CAL. BUS. & PROF. CODE § 123). Prohibited conduct includes: (a) Interference with the security of the examination materials, including unauthorized removal of materials from the examination room; (b) paying a professional to reconstruct the exam; (c) unauthorized reproduction of the exam; (d) use or distribution of improperly obtained examination questions; (e) communication with another examinee during the exam; (f) exchanging or copying answers; (g) using unauthorized materials; (h) impersonating an examinee; or (i) having an impersonator take the exam on your behalf. *Id.* A person violating the provisions of Chapter 1022 is liable for the litigation costs and up to \$10,000 of the damages incurred by the examination agency, in addition to any separately imposed penalty. *Id.*

person's license.³ Chapter 1022 provides further that the licensing board, Attorney General, or the district attorney may seek a restraining order before a violation occurs.⁴

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3. *Id.* sec. 3, at ____ (enacting CAL. BUS. & PROF. CODE § 496).

4. *Id.* sec. 4, at ____ (amending CAL. BUS. & PROF. CODE § 497 and enacting CAL. BUS. & PROF. CODE § 123.5).

Business Associations and Professions; licensing of clinical laboratories and technicians

Business and Professions Code § 1270 (repealed, new, amended); § 1272.5 (repealed, new); §§ 1211.5, 1270.5, 1271, 1272, 1272.4, 1272.6, 1274, 1323, 1324, 1325, 1326, 1327 (new); §§ 1225, 1300, 1320, 1321, 1322 (amended).

AB 32 (Tanner); 1989 STAT. Ch. 927

Support: California Association of Cytotechnologists; Planned Parenthood Affiliates of California; Soroptomist International of Rosemaid; California National Organization for Women; Commission on the Status of Women

Opposition: California Clinical Laboratory Association

Under existing law, the State Department of Health Services (Department) is responsible for licensing and regulating clinical laboratories.¹ Clinical laboratories must cooperate with the Department's efforts to determine compliance with clinical laboratory regulations.² Chapter 927 authorizes the Department to inspect buildings, equipment, records, test results, or test specimens and to obtain samples or evidence needed in order to enforce Chapter 927.³ Chapter 927 also requires clinical laboratories to participate in an approved pro-

1. See CAL. BUS. & PROF. CODE §§ 1200-1322 (West 1974 and West Supp. 1989) (Clinical Laboratory Technology regulations). See also *id.* § 1206(a)(3) (West Supp. 1989) (definition of clinical laboratory).

2. *Id.* § 1225 (West 1989) (amended by 1989 Cal. Stat. ch. 927, sec. 2, at ____).

3. 1989 Cal. Stat. ch. 927, sec. 2, at ____ (amending CAL. BUS. & PROF. CODE § 1225).

ficiency testing program if tests done in the laboratory are within specified specialty areas.⁴

Existing law permits unlicensed cytotechnologists⁵ to perform procedures necessary in the preliminary evaluation of cellular material if properly supervised.⁶ Chapter 927 directs that on and after January 1, 1991, all cytotechnologists must be licensed by the Department.⁷ License applicants must demonstrate satisfactory performance in a competency testing program approved by the Department in order to obtain a license.⁸

Existing law does not limit the number of slides that a cytotechnologist may examine in a twenty-four hour period.⁹ Chapter 927 limits the number of gynecologic slides a cytotechnologist may examine in a twenty-four hour period to eighty.¹⁰ All clinical labora-

4. *Id.* sec. 7, at ____ (enacting CAL. BUS. & PROF. CODE § 1272). These specialty areas are microbiology, serology, clinical chemistry, hematology, cytology, and immunohematology. *Id.* Each laboratory must also show satisfactory performance in these laboratory specialties. *Id.*

5. See 17 CAL. CODE REGS. § 1034.2 (1978) (allows cytotechnologists to participate in microscopic examination of exfoliative cells from human beings if specified qualifications are met; a certificate must be issued to the cytotechnologist, but there is no license requirement). See also SLOANE-DORLAND MEDICAL LEGAL DICTIONARY 180 (2nd ed.) (1986) (definitions of cytology and exfoliative cytology).

6. See CAL. BUS. & PROF. CODE § 1270 (West Supp. 1989). This section will be repealed by Chapter 927 on January 1, 1991. 1989 Cal. Stat. ch. 927, sec. 3, at ____.

7. 1989 Cal. Stat. ch. 927, sec. 4, at ____ (enacting CAL. BUS. & PROF. CODE § 1270(a)). Cytotechnologists employed by a licensed clinical laboratory and certified as cytotechnologists by the Department on or before January 1, 1991, are not required to be licensed until on or after January 1, 1993. *Id.* Cytotechnologist licenses must be renewed every two years. *Id.* Physicians and surgeons certified under Chapter 5 (commencing with section 2000) of the Business and Professions Code are exempted from this licensing requirement. *Id.* The adoption of licensing and competency requirements is intended to protect public health and safety. *Id.* sec. 1, at ____ Chapter 927 also allows for the application for, renewal of, and the payment of fees for a cytotechnologist license. *Id.* sec. 5, at ____ (enacting CAL. BUS. & PROF. CODE § 1270.5(a)); *id.* sec. 11, at ____ (amending CAL. BUS. & PROF. CODE § 1300(d)).

8. *Id.* sec. 4, at ____ (enacting CAL. BUS. & PROF. CODE § 1270(b)). This section becomes operative on January 1, 1993. *Id.* (enacting CAL. BUS. & PROF. CODE § 1270(c)). The competency testing program may be administered by the Department or a competency testing service or program the Department approves. *Id.* sec. 4, at ____ (enacting CAL. BUS. & PROF. CODE § 1270(b)). The competency testing program must be reviewed by the Department periodically to ensure consistency with federal competency testing requirements as established by the Clinical Laboratory Improvement Amendments of 1988, Pub. L. No. 100-578; 42 United States Code sections 263a, 353. *Id.* It is the intent of the legislature in enacting Chapter 927 to make state law consistent with federal law. *Id.* sec. 1, at ____ Laboratories not accredited by the Secretary of Health and Human Services cannot participate under title XVIII or XIX of the Social Security Act (42 U.S.C. §§ 1395, 1396). 42 U.S.C. § 263a(b) (1978).

9. See CAL. BUS. & PROF. CODE §§ 1200-1322 (Clinical Laboratory Technology regulations).

10. 1989 Cal. Stat. ch. 927, sec. 6, at ____ (enacting CAL. BUS. & PROF. CODE § 1271(a)). Most gynecologic slides examined are to test for the presence of cervical cancer (the test is called a Pap smear). See GRAY & GORDY, ATTORNEY'S TEXTBOOK OF MEDICINE §§ 290.86(1), 290.86(4) (1986). The prognosis of advanced cervical cancer is poor, while the prognosis of

tories are now required under Chapter 927 to maintain records regarding the number of gynecologic and nongynecologic slides examined monthly and yearly and the number of such slides each cytotechnologist examines in specified periods of time.¹¹ Chapter 927 also requires that the presence of any factor inhibiting the proper examination of a cytologic slide must be reported to the referring physician.¹²

Existing law does not provide for separate standards for clinical laboratories providing cytology services.¹³ Chapter 927 provides that the Department establish standards to evaluate cytologic slides and their adequacy, implement a cytotechnologist competency program, and develop a proficiency testing program for clinical laboratories providing cytology services.¹⁴

Existing law contains no requirement for clinical laboratories to follow up on abnormal results.¹⁵ Chapter 927 requires clinical laboratories that have identified an abnormality for a patient with a previously normal finding to reexamine all previous available cytologic slides on that patient.¹⁶ Chapter 927 also requires clinical laboratories to send, on a quarterly basis, informational letters to

an early stage of this cancer is good; therefore early detection is vital to improve survival. GRAY & GORDY at §§ 290.86(7), 290.86(9).

11. 1989 Cal. Stat. ch. 927, sec. 6, at ____ (enacting CAL. BUS. & PROF. CODE § 1271(f)(j)). Ten percent of the normal slides must be reexamined by a cytopathologist or supervising cytotechnologist. *Id.* sec. 6, at ____ (enacting CAL. BUS. & PROF. CODE § 1271(k)). Each cytotechnologist must also keep records of their hours worked. *Id.* sec. 6, at ____ (enacting CAL. BUS. & PROF. CODE § 1271(g)).

12. *Id.* sec. 6, at ____ (enacting CAL. BUS. & PROF. CODE § 1271(i)). No report may be issued on an inadequate slide. *Id.* Each clinical laboratory must also retain all cytology slides and cell blocks examined for five years, and all cytology reports must be retained for 10 years. *Id.* sec. 6, at ____ (enacting CAL. BUS. & PROF. CODE § 1271(h)).

13. See CAL. BUS. & PROF. CODE §§ 1200-1322 (Clinical Laboratory Technology regulations).

14. 1989 Cal. Stat. ch. 927, sec. 8, at ____ (enacting CAL. BUS. & PROF. CODE § 1272.4). The proficiency testing program for laboratories providing cytology services must be developed on or before January 1, 1991, and may be administered by the Department or an approved proficiency testing service or program. *Id.* sec. 9.5, at ____ (enacting CAL. BUS. & PROF. CODE § 1272.6). This proficiency program will include announced and unannounced on-site testing. *Id.* sec. 9.5, at ____ (enacting CAL. BUS. & PROF. CODE § 1272.6). Out of state laboratories providing cytology services will be certified by the Department as substantially meeting the California requirements for a clinical laboratory license. *Id.* sec. 9, at ____ (enacting CAL. BUS. & PROF. CODE § 1272.5(a)).

15. See CAL. BUS. & PROF. CODE §§ 1200-1322 (Clinical Laboratory Technology regulations).

16. 1989 Cal. Stat. ch. 927, sec. 10, at ____ (enacting CAL. BUS. & PROF. CODE § 1274(b)). The laboratory must maintain records of this reexamination which includes the name of the individual who performed the earlier examination. *Id.* sec. 10, at ____ (enacting CAL. BUS. & PROF. CODE § 1274(c)).

anyone submitting cytologic samples for evaluation who has been diagnosed as having dysplasia¹⁷ or any stage of cervical cancer.¹⁸

Existing law provides for the grounds and procedures to deny, suspend, or revoke the license of a laboratory issued by the Department.¹⁹ Chapter 927 revises these grounds and prohibits any person or entity owning or operating a clinical laboratory whose license has been revoked from owning or operating another laboratory within two years of the license revocation.²⁰ Chapter 927 also authorizes the Department to temporarily suspend a license prior to any hearing to protect the public welfare.²¹ Under Chapter 927 the Department may automatically suspend the license of a clinical laboratory which has had its certificate revoked pursuant to the Clinical Laboratory Improvement Amendments of 1988²² or which has been barred from participation under the Medicare or Medicaid program.²³

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17. Dysplasia (also called Cervical Intraepithelial Neoplasia) indicates abnormal microscopic cellular changes in the cervix that have not spread to the surrounding tissues and are considered precancerous. GRAY & GORDY, ATTORNEY'S TEXTBOOK OF MEDICINE §§ 290.86, 290.86(5) (1986). Cervical tumors are classified (called staging) on the basis of how far the tumor has spread, and treatment is dependent on the stage of the tumor. *Id.* § 290.86(6).

18. 1989 Cal. Stat. ch. 927, sec. 10, at ____ (enacting CAL. BUS. & PROF. CODE § 1274(a)). These letters and any responses must be maintained for five years by the laboratory. *Id.*

19. See CAL. BUS. & PROF. CODE § 1320 (amended by 1989 Cal. Stat. ch. 927, sec. 12, at ____).

20. 1989 Cal. Stat. ch. 927, sec. 12, at ____ (amending CAL. BUS. & PROF. CODE § 1320(c)(f)(g)) (a license may be revoked with proof of false statements by the applicant or licensee on the application for license or renewal, for immoral or unsafe conduct in the maintenance or operation of the licensed premises, or violation by the applicant or licensee of any rule or regulation in Chapter 927). See also *id.* sec. 16, at ____ (enacting CAL. BUS. & PROF. CODE § 1324) (prohibiting a person or entity whose license has been revoked to own or operate a clinical laboratory for two years after revocation).

21. *Id.* sec. 15, at ____ (enacting CAL. BUS. & PROF. CODE § 1323). A hearing must be held within 30 days after the licensee has been notified and the temporary suspension must be vacated if no final decision is made within 60 days after the hearing is completed. *Id.* A hearing is usually required first to determine if revocation is proper. See CAL. GOV'T CODE § 11503 (West 1980). Chapter 927 provides that proceedings for suspension or revocation be conducted in accordance with general administrative adjudication provisions. 1989 Cal. Stat. ch. 927, sec. 14, at ____ (amending CAL. BUS. & PROF. CODE § 1322) (West Supp 1989). See also CAL. GOV'T CODE §§ 11500-11528 (West 1980 and West Supp. 1989) (provisions regulating administrative adjudication).

22. See 42 U.S.C. § 263a (1989).

23. 1989 Cal. Stat. ch. 927, sec. 17, at ____ (enacting CAL. BUS. & PROF. CODE § 1325). The license suspension will be for the period the clinical laboratory's certificate is revoked or during which it is barred. *Id.*

Business Associations and Professions; mandatory continuing legal education

Business and Professions Code § 6070 (new); § 6006 (amended).

SB 905 (Davis); 1989 STAT. CH. 1425

Support: The State Bar of California; Los Angeles County Bar Association; California Trial Lawyers Association

Chapter 1425 requires the State Bar (Bar) to request that the Supreme Court of California adopt a rule of court authorizing the Bar to operate a mandatory continuing legal education program.¹ If the Supreme Court adopts the rule of court, Chapter 1425 would require the program to begin on January 1, 1991.²

The State Bar must request a program requiring thirty-six hours of legal education during designated thirty-six month periods.³ Certain Bar members are exempt from the requested program.⁴ A Bar member who fails to meet the continuing education requirements will be enrolled as an inactive member.⁵

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1. 1989 Cal. Stat. ch. 1425, sec. 2, at ____ (adding CAL. BUS. & PROF. CODE § 6070(a)).

2. *Id.*

3. *Id.*

4. *Id.* (adding CAL. BUS. & PROF. CODE § 6070(c)) (retired state judges, officers, and elected officials, full-time law school professors, and full-time state employees are exempt from continuing legal education requirements).

5. *Id.* (adding CAL. BUS. & PROF. CODE § 6070(a)). *See generally id.* sec. 1, at ____ (amending CAL. BUS. & PROF. CODE § 6006) (privileges of voluntary inactive members); CAL. BUS. & PROF. CODE § 6007 (West Supp. 1989) (privileges of involuntary inactive members).

Business Associations and Professions; nonprofit corporations—director's liability

Code of Civil Procedure § 425.15 (amended); Corporations Code §§ 5047.5, 21200 (amended).

SB 894 (Lockyer); 1989 STAT. CH. 864

Sponsor: California Medical Association; Support: Association for California Tort Reform

Existing law grants qualified immunity¹ to, and prohibits negligence actions² against, the volunteer directors³ and officers⁴ of nonprofit corporations⁵ incorporated pursuant to California's nonprofit corporations laws.⁶ Chapter 864 expands existing law by specifying that the nonprofit corporation only needs to be *subject to*⁷ the nonprofit corporations laws in order for the qualified immunity and prohibitions on negligence actions to attach.⁸ This amendment is apparently

1. The immunity applies when the directors or officers commit a negligent act or omission while acting within the scope of their duties, in good faith, under the belief that the act was in the best interest of the corporation, and where the act was an exercise of the person's policymaking judgment. CAL. CORP. CODE § 5047.5 (West 1989) (amended by 1989 Cal. Stat. ch. 864, sec. 2, at ____). *But see* *Frances T. v. Village Green Owners Ass'n*, 42 Cal. 3d 490, 504, 723 P.2d 573, 580, 229 Cal. Rptr. 456, 463 (1986) (holding that although the directors of nonprofit corporations are not compensated does not exonerate them from liability for a negligent act or omission).

2. Only negligence actions that arise from incidents which occurred while the directors or officers were acting within the scope of their duties are subject to the restriction. CAL. CIV. PROC. CODE § 425.15(a) (West 1989) (amended by 1989 Cal. Stat. ch. 864, sec. 1, at ____). The prohibition against negligence causes of action may be lifted if the court enters an order allowing the pleading; but only after making a determination that the plaintiff has produced evidence which substantiates the claim. *Id.*; CAL. CORP. CODE § 5047.5(b) (amended by 1989 Cal. Stat. ch. 864, sec. 2, at ____).

3. *See* CAL. CORP. CODE § 5047 (West Supp. 1989) (definition of director of a nonprofit corporation).

4. *See id.* § 312(b) (West 1977) (providing for designation or election of corporate officers).

5. Negligence actions are prohibited against the volunteer directors or officers of a nonprofit public benefit corporation, a nonprofit mutual benefit corporation, or a nonprofit religious corporation. CAL. CORP. CODE § 5047.5(b) (amended by 1989 Cal. Stat. ch. 864, sec. 2, at ____). *See id.* §§ 5060 (West Supp. 1989) (definition of nonprofit public benefit corporation); 5059 (definition of nonprofit mutual benefit corporation); 5061 (definition of nonprofit religious corporation).

6. 1989 Cal. Stat. ch. 864, secs. 1-3 (amending CAL. CIV. PROC. CODE § 425.15(a)-(c); CAL. CORP. CODE §§ 5047.5, 21200). *See generally* CAL. CORP. CODE §§ 5110-6910 (West Supp. 1989) (Nonprofit Public Benefit Corporation Law); 7110-8910 (Nonprofit Mutual Benefit Corporation Law); 9110-9610 (Nonprofit Religious Corporation Law).

7. 1989 Cal. Stat. ch. 864, sec. 1, at ____ (amending CAL. CIV. PROC. CODE § 425.15(c)). Section 425.15 of the California Code of Civil Procedure applies only to directors and officers of nonprofit corporations that are subject to the nonprofit corporation laws. *Id.* *See also id.* sec. 2, at ____ (amending CAL. CORP. CODE § 5047.5(b)) (providing qualified immunity for volunteer nonprofit corporation directors and officers if their corporations are subject to the nonprofit corporations laws).

8. *Id.* (amending CAL. CIV. PROC. CODE § 425.15). *See also id.* sec. 2, at ____ (amending

designed to extend the protections of existing law to corporations which were incorporated under the prior California General Non-profit Corporations Law.⁹

Existing law provides the same qualified immunity from liability extended to volunteer directors and officers of non-profit organizations to the volunteer directors and officers of unincorporated non-profit medical associations.¹⁰ Chapter 864 expands the definition of an unincorporated medical association to include any organized medical society¹¹ whose members comprise more than twenty-five percent of the licensed physicians¹² and surgeons¹³ residing in the geographic area served by the association.¹⁴

JLO

CAL. CORP. CODE § 5047.5(b)). Foreign corporations are subject to the nonprofit corporations laws. CAL. CORP. CODE §§ 6910, 8910 (West Supp. 1989).

9. Telephone conversation with Gene Wong, Counsel, Judiciary Committee, California State Senate (Sept. 25, 1989) (notes on file at the *Pacific Law Journal*). Older corporations are subject to the nonprofit corporations laws without having to reincorporate, but they are not *incorporated pursuant to* nonprofit corporations laws. CAL. CORP. CODE § 9912(a) (subjecting existing corporations to the new laws). See 1988 Cal. Stat. ch. 567, sec. 5, at ____ (repealing the California General Non-Profit Corporation Law and enacting the nonprofit corporations laws).

10. Compare CAL. CORP. CODE § 24001.5(b) (West Supp. 1989) with *id.* § 5047.5(b). See CAL. CORP. CODE § 21200 (amended by 1989 Cal. Stat. ch. 864, sec. 3, at ____ (definition of unincorporated medical association)).

11. See *id.* § 43.7(b) (West 1977) (definition of professional society, which includes certain medical organizations).

12. See CAL. BUS. & PROF. CODE § 2041 (West Supp. 1989) (definition of licensed physician).

13. See *id.* (definition of licensed surgeon).

14. 1989 Cal. Stat. ch. 864, sec. 3, at ____ (amending CAL. CORP. CODE § 21200). An association of less than 100 members must be comprised of at least 50% of the licensees in the geographic area the association serves. *Id.* Compare *id.* with CAL. CIV. CODE § 43.95 (West Supp. 1989) (similar requirements for membership of a medical society).

Business Associations and Professions; private investigators

Business and Professions Code § 7541.1 (new); § 7541 (amended).
AB 613 (Lancaster); 1989 STAT. Ch. 549

Existing law requires applicants for a private investigator's license to have a specified amount of experience in investigation work.¹ Under prior law, the Director of Consumer Affairs (Director) was

1. CAL. BUS. & PROF. CODE § 7541 (amended by 1989 Cal. Stat. ch. 549, sec. 1, at ____).

authorized to determine whether an applicant met this requirement through equivalent experience.² Chapter 549 removes this authorization.³

Under prior law, applicants who could not obtain written certifications of experience from their employers could submit certifications of experience from other parties.⁴ Chapter 549 removes this alternative.⁵

Prior law left the evaluation of the applicant's experience to the Director's discretion.⁶ Chapter 549 specifies that experience will be credited only if that experience was gained through certain types of employment or education.⁷ Chapter 549 also specifies those activities which do not qualify as investigative experience.⁸

VJG

2. 1983 Cal. Stat. ch. 1196, sec. 2, at 6822 (enacting CAL. BUS. & PROF. CODE § 7541) (amended by 1989 Cal. Stat. ch. 549, sec. 1, at ____).

3. 1989 Cal. Stat. ch. 549, sec. 1, at ____ (amending CAL. BUS. & PROF. CODE § 7541).

4. CAL. BUS. & PROF. CODE § 7541 (West Supp. 1989).

5. 1989 Cal. Stat. ch. 549, sec. 1, at ____ (amending CAL. BUS. & PROF. CODE § 7541). See *id.* (definition of employer).

6. CAL. BUS. & PROF. CODE § 7541 (West Supp. 1989).

7. 1989 Cal. Stat. ch. 549, sec. 2, at ____ (enacting CAL. BUS. & PROF. CODE § 7541.1(a)). Qualifying employment experience includes: Employment as a sworn law enforcement officer, military police, and insurance adjuster; employment by licensed private investigators, collection agencies, or repossessioners; and employment by a public agency as an arson investigator. *Id.* Qualifying educational experience includes an Associate of Arts degree in police science, criminal law, or justice. *Id.* (enacting CAL. BUS. & PROF. CODE § 7541.1(b)).

8. *Id.* (enacting CAL. BUS. & PROF. CODE § 7541.1(c)). Non-qualifying experience includes: Service of legal process or other documents; public record searches; transporting or having custody of persons in legal custody; bailiff or other court security; debt collection by telephone or written solicitation; and repossession after the subject property has been located. *Id.*

Business Associations and Professions; professional wrestling—deregulation

Business and Professions Code §§ 18626, 18770, 18771, 18773, 18774, 18775, 18776, 18777, 18808 (repealed); §§ 18611, 18622, 18623, 18625, 18640, 18641, 18642, 18700, 18702, 18703, 18714, 18804, 18809, 18812, 18824, 18840, 18842, 18848, 18849, 18850, 18852 (amended).

AB 1040 (Floyd); 1989 STAT. Ch. 757

Opposition: California Athletic Commission, Department of Consumer Affairs, Department of Finance

Under prior law, the State Athletic Commission (Commission) regulated professional wrestling.¹ Chapter 757 removes the Commission's control over professional wrestler licensing and events.² Wrestling promoters still must report ticket sales for each event, and all

1. 1985 Cal. Stat. ch. 1092, sec. 2, at 473 (enacting CAL. BUS. & PROF. CODE § 18641) (amended by 1989 Cal. Stat. ch. 757, sec. 7, at ____). The Commission had the power to license referees, announcers, and other employees involved in wrestling events. *Id.* The Commission regulated the licensing of the wrestlers and only allowed licensed wrestlers to participate in a match. *Id.* (enacting CAL. BUS. & PROF. CODE § 18642) (amended by 1989 Cal. Stat. ch. 757, sec. 8, at ____). No wrestling event could take place without the Commission's approval. *Id.* (enacting CAL. BUS. & PROF. CODE § 18640) (amended by 1989 Cal. Stat. ch. 757, sec. 6, at ____). Buildings used for wrestling matches were required to meet safety standards. *Id.* at 477 (enacting CAL. BUS. & PROF. CODE § 18700) (amended by 1989 Cal. Stat. ch. 757, sec. 9, at ____). *See id.* at 482, 483 (enacting CAL. BUS. & PROF. CODE §§ 18804, 18808, 18809, amending CAL. BUS. & PROF. CODE § 18812) (amended by 1989 Cal. Stat. ch. 757, secs. 14-17, at ____). (describing renewal fees required for wrestlers, referees, and promoters); *id.* at 486 (enacting CAL. BUS. & PROF. CODE § 18840) (amended by 1989 Cal. Stat. ch. 757, sec. 18, at ____). (giving the Commission the power to grant unrestricted licenses); *id.* at 478 (amending CAL. BUS. & PROF. CODE § 18714) (amended by 1989 Cal. Stat. ch. 757, sec. 12, at ____). (giving the Commission the power to observe and recommend medical and safety standards for wrestling matches); *id.* at 486, 488 (enacting CAL. BUS. & PROF. CODE § 18842, 18848, 18849, 18850) (amended by 1989 Cal. Stat. ch. 757, secs. 19-22, at ____). (describing penalties that the Commission may impose if its regulations are not met).

2. 1989 Cal. Stat. ch. 757, at ____ (repealing CAL. BUS. & PROF. CODE §§ 18826, 18808, 18770, 18771, 18773-186777, amending CAL. BUS. & PROF. CODE §§ 18611, 18622, 18623, 18625, 18640-18642, 18700, 18702, 18703, 18714, 18804, 18809, 18812, 18824, 18840, 18842, 18848-18850, 18852). Other states have deregulated wrestling. *See, e.g.*, 1982 Conn. Pub. Acts §4-344, sec. 3, at ____ (amending CONN. GEN. STAT. ANN. § 21a-196 (West 1989) (amended by 1985 Conn. Pub. Acts §5-293, sec. 1, at ____). Those who favor deregulating wrestling believe professional wrestling is "entertainment" rather than a sport, and therefore should not be regulated like a sport. *See* N.Y. Times, Feb. 10, 1989, § 1, at 1, col. 6 (discussion of whether professional wrestling is a sport or entertainment), *id.* Feb. 23, 1989, § 2, at 13, col. 1 (criticizing the deregulation of professional wrestling and labelling the activity as entertainment).

charges incurred from the exploitation of broadcast and television rights, to the Commission.³

KR

3. CAL. BUS. & PROF. CODE § 18824 (West 1987). Wrestling promoters must pay the State Athletic Commission five percent of the the gross revenue obtained from admission and broadcast and television rights for tax purposes. *Id.*

Business Associations and Professions; real estate brokers— interest on trust funds

Business and Professions Code § 854.1 (new).

AB 1042 (Bane); 1989 STAT. Ch. 305

Sponsors: California Banker's Association, California Mortgage Banker's Association

Existing law prohibits interest earned on real estate broker's trust accounts from inuring to the real estate broker.¹ Chapter 305 creates an exception to existing law, so that benefits from funds in a demand deposit account will inure to real estate brokers who solicit, negotiate, or perform services for borrowers or lenders in connection with a loan secured by real property.²

SJ

1. CAL. BUS. & PROF. CODE § 10145 (West 1987) (requiring real estate brokers to deposit non-escrow funds in federally insured trust fund accounts). *See id.* § 10131 (definition of real estate broker).

2. 1989 Cal. Stat. ch. 305, sec. 1, at ____ (enacting CAL. BUS. & PROF. CODE § 854.1). The provisions of Chapter 305 are not meant to affect the permissibility of other deposit relationships. *Id.* sec. 2, at ____ (enacting Cal. Bus. & Prof. Code § 854.1).

Business Associations and Professions—registration of commercial fundraisers

Government Code § 12599 (new).

SB 502 (Lockyer); 1989 STAT. Ch. 307

Source: Attorney General

Support: United Way

Chapter 307 treats commercial fundraisers¹ engaged in charitable fundraising activities as constructive trustees,² subject to the Uniform Supervision of Trustees for Charitable Purposes Act (Act).³ This allows the attorney general to supervise charitable funds, and enforce requirements relating to commercial fundraisers.⁴

Chapter 307 requires commercial fundraisers who raise funds for charities to register with the Attorney General's Office.⁵ Commercial fundraisers must account to the Attorney General's Office for all funds collected.⁶ This accounting must include an annual financial report.⁷ Commercial fundraisers who do not register before soliciting funds for charitable purposes may be subject to an injunction against solicitation.⁸

BDD

1. See 1989 Cal. Stat. ch. 307, sec. 2, at ____ (enacting CAL. GOV'T CODE § 12599(a)) (definition of commercial fundraisers).

2. *Id.* (commercial fundraisers are not considered "trustees" as defined in California Government Code sections 12582 or 12583, nor are they considered "charitable corporations" as defined by California Government Code section 12582.1).

3. *Id.* (enacting 1989 CAL. GOV'T CODE § 12599). See CAL. GOV'T CODE §§ 12580-12598 (West 1987) (Uniform Supervision of Trustees for Charitable Purposes Act).

4. 1989 Cal. Stat. ch. 307, sec. 2, at ____ (enacting CAL. GOV'T CODE § 12599(f)). Commercial fundraisers are subject to supervision over assets and charitable funds by the attorney general to the same extent as is a trustee for charitable purposes. *Id.*

5. *Id.* Commercial fundraisers must register and file annual financial reports accounting for solicited funds. *Id.* See *id.* (establishing the times for filing reports and renewing registration, and establishing required contents of the financial statements pursuant to California Government Code section 12586, and Internal Revenue Code section 501(c)(3)).

6. *Id.* (enacting CAL. GOV'T CODE § 12599(c)).

7. *Id.* (enacting CAL. GOV'T CODE § 12599(d)). The report must include the total revenue collected, the fees or commissions charged by the fundraiser, and the distributions made to the identified charitable organizations or purposes. *Id.* The United States Supreme Court declared unconstitutional a North Carolina statute regulating commercial fundraisers. *Riley v. National Fed'n of the Blind*, 108 S. Ct. 2667 (1988). The North Carolina statute required commercial fundraisers to disclose to solicitees the percentage of gross receipts the fundraiser passed on to charities. *Id.* at 2672. This provision was found to be too burdensome and insufficiently tailored to pass first amendment scrutiny. *Id.* at 2678. In dicta, the court indicated that a provision which merely required the registration of information with the state would be narrowly tailored. *Id.* at 2676. Since Chapter 307 only requires disclosure to the state and not to the solicitees, Chapter 307 should not violate the first amendment.

8. 1989 Cal. Stat. ch. 307, sec. 2, at ____ (enacting CAL. GOV'T CODE § 12599(e)). The remedies provided in Chapter 307 are not exclusive. *Id.*

Business Associations and Professions; securities—exemption from qualification for sale

Corporations Code §§ 500, 25101 (amended).

SB 275 (Campbell); 1989 STAT. CH. 683

Sponsor: Committee on Corporate Government

Support: Merrill Lynch, Paine Webber, Bear Sterns, Prudential-Bache Securities, Shearson Lehman Hutton, Dean Witter Reynolds, Inc., Montgomery Securities, Robertson Stephens & Co., Wedbusch Securities, Orrick Herrington & Sutcliffe, Securities Industry Association, National Association of OTC Companies

Opposition: The Department of Corporations

Under existing law, certain securities offered in a non-issuer transaction¹ are exempt from qualification² requirements.³ In order to receive this exemption, a notice⁴ must be filed with the Commissioner of Corporations (Commissioner).⁵ Existing law provides that this notice may be filed by the issuer, the holder of the security, or a broker-dealer.⁶ Under Chapter 683, notice may also be filed by the National Association of Securities Dealers.⁷

Existing law limits the amount of retained earnings or assets that may be distributed to shareholders.⁸ Chapter 683 exempts corporations licensed as broker-dealers from these limits if, immediately after the distribution, the corporation remains in compliance with net capital rules established by the Commissioner.⁹

BJW

1. A non-issuer transaction is any transaction that does not benefit the issuer. CAL. CORP. CODE § 25011 (West 1977).

2. "Qualification" means qualification for sale in the state. *See* CAL. CORP. CODE §§ 25111-25113 (West 1977 & Supp. 1989) (methods of qualification).

3. CAL. CORP. CODE § 25130. *See id.* §§ 25100-25105 (West Supp. 1989) (issues exempt from qualification). *Cf.* 15 U.S.C.S. § 77d (Law. Co-op 1989) (federal exempted transactions).

4. *See* CAL. CORP. CODE § 25101(b)(1)-(7) (amended by 1989 Cal. Stat. ch. 683, sec. 2, at ____ (contents of notice)).

5. *Id.* § 25101(b) (amended by 1989 Cal. Stat. ch. 683, sec. 2, at ____). Under existing law, no notice is required if the issuer has a security listed on a national exchange, or a security included in a National Association of Securities Dealers interdealer quotation system, that has been approved by the Commissioner. *Id.* § 25101(a) (amended by 1989 Cal. Stat. ch. 683, sec. 1, at ____).

6. *Id.* § 25101 (b)(7) (West Supp. 1989) (amended by 1989 Cal. Stat. ch. 683, sec. 2, at ____).

7. 1989 Cal. Stat. ch. 683, sec. 2, at ____ (amending CAL. CORP. CODE § 25101).

8. CAL. CORP. CODE § 500 (West Supp. 1989). The amount that may be distributed is limited by the corporation's retained earnings and current ratio. *Id.*

9. 1989 Cal. Stat. ch. 683, sec. 1, at ____ (amending CAL. CORP. CODE § 500(c)).

Business Associations and Professions; security guards

Business and Professions Code § 7539.3 (new); §§ 7521, 7539, 7544.6 (amended).

AB 1501 (Quackenbush); 1989 STAT. Ch. 674

Support: Legal Oversight Committee, Department of Consumer Affairs

Under existing law, an employee or representative of a licensed¹ private patrol operator² may only use or wear a badge³ while on duty and in uniform.⁴ Under Chapter 674, any person required to be registered as a security guard⁵ must wear a uniform and patch⁶ when using or wearing a baton or exposed firearm.⁷

Existing law provides that a uniformed employee of a private patrol operator must carry a registration card while on duty and a firearm permit while carrying a firearm on duty.⁸ Existing law also requires these employees to report to the private patrol employer within twenty-four hours of an incident involving an employee in which a firearm was discharged.⁹ Chapter 674 extends these requirements to include in-house guards and guards who are hired to protect property or a facility but who are not employees of a private patrol operator.¹⁰

KR

1. See CAL. BUS. & PROF. CODE § 7544.1 (West Supp. 1989) (describing experience requirement to obtain a license).

2. See *id.* § 7521(b) (West Supp. 1989) (defining private patrol operator).

3. See *id.* § 7539.5 (West Supp. 1989) (describing badge or cap insignia requirements).

4. *Id.* § 7539(h) (West Supp. 1989). The employee or representative must wear a patch on each arm that reads "private security" and that indicates the name of the private patrol company that the person represents. *Id.*

5. See 1989 Cal. Stat. ch. 674, sec. 1, at ____ (amending CAL. BUS. & PROF. CODE § 7521(g)) (defining security guard and including in the definition in-house guards and guards who are hired to protect a property or facility but who are not employees of a private patrol operator).

6. See *id.* sec. 2, at ____ (enacting CAL. BUS. & PROF. CODE § 7539.3) (describing patch requirements).

7. *Id.* sec. 1.5, at ____ (amending CAL. BUS. & PROF. CODE § 7539(l)).

8. CAL. BUS. & PROF. CODE § 7546.4 (West Supp. 1989).

9. *Id.* § 7544.6 (West Supp. 1989).

10. 1989 Cal. Stat. ch. 674, sec. 3, at ____ (amending CAL. BUS. & PROF. CODE § 7544.6). In-house guards and guards who are not employees of a private patrol operators are employees of a lawful business or public agency who perform the functions of a private patrol operator either on property owned or controlled by the guard's employer, or in the company of those who are being protected. *Id.* sec. 1, at ____ (amending CAL. BUS. & PROF. CODE § 7521(g)).

Business Associations and Professions; small business development

Corporations Code §§ 14022.1, 14023.5, 14028.5, 14029.1, 14029.2, 14029.3, 14029.4, 14029.5, 14029.6, 14029.7, 14029.8, 14029.9, 14029.91, 14029.92, 14029.95, 14029.96, 14035.5, 14044.1, 14081.1, 14081.2, 14083.5, 14083.6, 14110, 14111, 14112, 14115, 14121, 14122, 14125, 14126, 14127, 14129, 14130, 14131, 14133, 14140, 14141, 14142, 14144, 14145, 14146, 14147, 14148, 14149, 14150, 14180, 14181, 14182 (repealed); §§ 14000, 14001, 14002, 14005, 14020, 14021, 14022, 14023, 14025, 14026, 14027, 14029, 14030, 14031, 14032, 14033, 14034, 14035, 14040, 14041, 14043, 14044, 14045, 14046, 14049, 14060, 14062, 14063, 14064, 14066, 14075, 14080, 14081, 14082, 14083, 14084, 14085, 14090, 14100, 14101 (repealed and new); §§ 14003, 14004, 14006, 14007, 14008, 14009, 14010, 14011, 14012, 14013, 14014, 14015, 14016, 14017, 14018, 14019, 14024, 14028, 14036, 14037, 14038, 14039, 14042, 14047, 14048, 14050, 14051, 14052, 14053, 14054, 14055, 14056, 14057, 14058, 14059, 14061, 14065, 14067, 14068, 14069, 14070, 14071, 14072, 14073, 14074, 14076, 14077, 14078, 14079, 14086, 14087, 14088, 14089, 14091, 14092, 14093, 14094, 14095, 14096, 14097, 14098, 14099 (new).

AB 1542 (Woodruff); 1989 STAT. CH. 1399

Sponsor: Department of Commerce

Under existing law, the Small Business Development Board (Board) oversees small business development corporations (development corporations).¹ These development corporations make and guarantee loans and provide marketing and other services to small businesses² in order to stimulate the economy and employment generally, and to benefit economically disadvantaged, minority and disabled persons in particular.³

Chapter 1399 revises the existing Small Business Development Corporations Law⁴ by adding women to the list of groups intended to be benefitted by the Small Business Development Corporations

1. CAL. CORP. CODE § 14022 (West Supp. 1989) (amended by 1989 Cal. Stat. ch. 1399, sec. 2, at ____).

2. *Id.* §§ 14023, 14023.5 (amended by 1989 Cal. Stat. ch. 1399, sec. 2, at ____).

3. *Id.* § 14002 (amended by 1989 Cal. Stat. ch. 1399, sec. 2, at ____).

4. 1989 Cal. Stat. ch. 1399, sec. 1, at ____ (repealing and enacting CAL. CORP. CODE §§ 14000-14182).

Law,⁵ and by authorizing the Board to approve new nonprofit development corporations.⁶ The Board also must approve contracts between the development corporations and the Office of Small Business (Office).⁷

Under prior law, the Board was authorized to establish programs to do the following: (1) Assist regional development corporations entering into contracts to indemnify investors against risk of loss;⁸ (2) guarantee loans made by financial institutions;⁹ and (3) facilitate the transfer of small business between buyers and sellers.¹⁰ Chapter 1399 repeals this authorization.¹¹

Under prior law, development corporations used competitive bidding to select the financial institution to act as trustee of the corporation's funds.¹² When a development corporation proposed a compromise or reorganization, creditors and members were bound by a vote of two-thirds of the claimholders.¹³ Chapter 1399 also repeals these provisions.¹⁴

Under prior law, development corporations were allowed to assume an equity interest in a loan applicant's business, in lieu of loan fees.¹⁵ Prior law prohibited a development corporation's loan guarantees from exceeding fifty percent of the small business borrower's paid in capital and surplus.¹⁶ Under prior law, loans guaranteed by a development corporation and made by banks, insurance and surety

5. *Id.* sec. 2, at ____ (enacting CAL. CORP. CODE §§ 14001, 14002).

6. *Id.* (enacting CAL. CORP. CODE § 14022). Under prior law, the Board made recommendations to approve development corporations, but the executive director of the Office of Small Business was the only party who had the actual power to approve development corporations. 1988 Cal. Legis. Serv. ch. 1642, sec. 4, at 4722-4723 (West) (amending CAL. CORP. CODE § 14022) (repealed by 1989 Cal. Stat. ch. 1399, sec. 1, at ____).

7. 1989 Cal. Stat. ch. 1399, sec. 2, at ____ (enacting CAL. CORP. CODE § 14022(e)).

8. 1983 Cal. Stat. ch. 770, sec. 19, at 2834-2835 (enacting CAL. CORP. CODE § 14029.5) (repealed by 1989 Cal. Stat. ch. 1399, sec. 1, at ____).

9. *Id.* (enacting CAL. CORP. CODE § 14029.6) (repealed by 1989 Cal. Stat. ch. 1399, sec. 1, at ____).

10. *Id.* (enacting CAL. CORP. CODE § 14029.4) (repealed by 1989 Cal. Stat. ch. 1399, sec. 1, at ____).

11. 1989 Cal. Stat. ch. 1399, sec. 1, at ____ (repealing CAL. CORP. CODE §§ 14029.4, 14029.5, 14029.6).

12. 1988 Cal. Legis. Serv. ch. 1642, sec. 54, at 4730 (West) (amending CAL. CORP. CODE § 14115) (repealed by 1989 Cal. Stat. ch. 1399, sec. 1, at ____).

13. 1968 Cal. Stat. ch. 1455, sec. 1, at 2886 (amending CAL. CORP. CODE § 14121) (repealed by 1989 Cal. Stat. ch. 1399, sec. 1, at ____).

14. 1989 Cal. Stat. ch. 1399, sec. 1, at ____ (repealing CAL. CORP. CODE §§ 14115, 14121).

15. 1988 Cal. Legis. Serv. ch. 1642, sec. 62, at 4731-4732 (West) (amending CAL. CORP. CODE § 14131(e)) (repealed by 1989 Cal. Stat. ch. 1399, sec. 1, at ____).

16. 1983 Cal. Stat. ch. 770, sec. 19, at 2834-2835 (enacting CAL. CORP. CODE § 14029.5) (repealed by 1989 Cal. Stat. ch. 1399, sec. 1, at ____).

companies, and third party investors were legal, notwithstanding provisions of any other law.¹⁷ Chapter 1399 repeals all these provisions.¹⁸

Under Chapter 1399, each development corporation must establish at least one loan committee to review loan applications.¹⁹ When considering a loan application for approval, the loan committee must determine the feasibility of the proposed transaction and the probability of repayment, and then recommend appropriate action to the Board.²⁰ The loan committee must approve or deny the loan application expeditiously.²¹

Under prior law, grievances against development corporations could be appealed to the Office of Small Business.²² Chapter 1399 removes this avenue of appeal,²³ and instead requires development corporations to establish grievance procedures during their probationary period.²⁴

Under Chapter 1399, the state may consider credit guidelines, established by the Board's executive director, when investigating activities and expenditures of a development corporation.²⁵ Financial institutions supplying loans to businesses must be authorized to do business in California.²⁶

BJW

17. 1988 Cal. Legis. Serv. ch. 1642, sec. 50, at 4729 (West) (amending CAL. CORP. CODE, § 14090) (repealed by 1989 Cal. Stat. ch. 1399, sec. 1, at ____).

18. 1989 Cal. Stat. ch. 1399, sec. 1, at ____ (repealing CAL. CORP. CODE §§ 14029.5, 14090, 14131(e)).

19. *Id.* sec. 2, at ____ (enacting CAL. CORP. CODE § 14060(a)).

20. *Id.* (enacting CAL. CORP. CODE § 14060(b)).

21. *Id.* (enacting CAL. CORP. CODE §14060(c)). Development corporations must give firms receiving Small Business Innovation Research grants from the federal government priority for marketing services and loan guarantees. *Id.* (enacting CAL. CORP. CODE § 14091).

22. 1988 Cal. Legis. Serv. ch. 1642, sec. 23, at 4726 (West) (amending CAL. CORP. CODE § 14035.5) (repealed by 1989 Cal. Stat. ch. 1399, sec. 1, at ____).

23. 1989 Cal. Stat. ch. 1399, sec. 1, at ____ (amending CAL. CORP. CODE § 14035.5). See generally *id.* sec. 2, at ____ (enacting CAL. CORP. CODE § 14052) (six-month probation for newly established development corporations).

24. *Id.* sec. 2, at ____ (enacting CAL. CORP. CODE § 14049).

25. *Id.* (enacting CAL. CORP. CODE § 14064). The provisions of the Small Business Corporations Law must also be considered. *Id.*

26. *Id.* (enacting CAL. CORP. CODE § 14010(b)).