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Business Associations and Professions

University of the Pacific; McGeorge School of Law

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Business Associations and Professions

Business Associations and Professions; attorneys

Business and Professions Code § 6086.9 (repealed & new); §§ 6079, 6079.5, 6086.8, 6086.10, 6088, 6089, 6090, 6090.5, 6091, 6092, 6092.5, 6093, 6093.5, 6094, 6094.5, 6095, 6140.7, 6148, 6149, 6204.5 (new); §§ 6002.1, 6007, 6068, 6086.6, 6142, 6143, 6147 (amended).

SB 1543 (Presley); 1986 STAT. Ch. 1114

Sponsor: Task Force on State Bar Discipline

Support: Assembly Republican Caucus; Department of Finance

SB 1569 (Presley); 1986 STAT. Ch. 475

Sponsor: Task Force on State Bar Discipline

Support: State Bar of California

AB 1260 (La Follette); 1986 STAT. Ch. 662

Sponsor: Professor Noel Keyes, Pepperdine University Law School

Support: State Bar of California

MEMBERSHIP

Existing law requires members of the State Bar of California (State Bar)¹ to maintain their current office address or other address to be used for State Bar purposes on the State Bar's official membership record.² Chapter 475 expands existing law by requiring members to maintain the following information on official membership records, in addition to their address: (1) all specialties in which the member is certified,³ (2) any other bar memberships in other jurisdictions, (3) the nature and date of any discipline imposed by another jurisdiction,⁴

1. CAL. BUS. & PROF. CODE § 6002 (definition of members). *See generally* 1 B. WITKIN, CALIFORNIA PROCEDURE, *Attorneys* § 263 (3rd ed. 1985 & Supp. 1986) (membership in general).

2. CAL. BUS. & PROF. CODE § 6002.1(a). Any change of address must be filed with the membership records office within 10 days. *Id.*

3. *Id.* § 6002.1(a)(2); *see generally* 1 B. WITKIN, *supra* note 1, §§ 9-27 (specialization and specialties).

4. CAL. BUS. & PROF. CODE § 6002.1(a)(4) (including the terms and conditions of any probation, and, if suspended or disbarred, the date of any reinstatement).

and (4) any other information required by the attorney disciplinary agency.⁵

Existing law requires the Board of Governors of the State Bar (the Board) to designate members as inactive under certain specified circumstances.⁶ Prior law provided that the Board could order an involuntary inactive enrollment upon a finding that an attorney's conduct posed an imminent threat of harm to clients or the public.⁷ The standard for determining whether an attorney posed an imminent threat was whether there was a *substantial* likelihood of *irreparable* harm.⁸ Chapter 1114 specifies that a *reasonable* likelihood that *substantial* harm will occur is the new standard for involuntary inactive enrollment.⁹ Chapter 1114 further provides that an attorney's failure to comply with official membership records requirements¹⁰ constitutes grounds for ordering an involuntary inactive enrollment, if the attorney cannot be located after reasonable investigation.¹¹ Finally, Chapter 1114 provides that the Board may order inactive enrollment when the attorney is in violation of probation.¹²

DISCIPLINING OF ATTORNEYS

Under existing law, the Board has the power to discipline members of the State Bar for willful¹³ breaches of the California Rules of

5. *Id.* § 6002.1(a). Any change in the information concerning specialty certifications or other memberships must be reported to the records office by February 1st of each year, while all other informational changes must be reported within 30 days. *Id.* Information required by disciplinary agencies will not be available to the general public unless required to be made available by a condition of probation. *Id.* § 6002.1(d).

6. *Id.* § 6007(b). Specified circumstances include the following: A member requires involuntary treatment or confinement; a member asserts a claim of insanity or mental incompetence; the court assumes jurisdiction over the member's practice; or the Board finds the member is unable or habitually fails to perform duties, or is unable to practice law without endangering the interests of clients and the public. *Id.* The board must terminate the inactive enrollment upon proof that the member's disability no longer exists, and upon payment of all fees and costs required. *Id.* See generally 1 B. WITKIN, *supra* note 1, § 264 (inactive members).

7. 1985 Cal. Stat. ch. 453, sec. 2, at ____ (amending CAL. BUS. & PROF. CODE § 6007).

8. *Id.*

9. CAL. BUS. & PROF. CODE § 6007(c)(2)(A) (the attorney has caused or is causing substantial harm); *id.* § 6007(c)(2)(B) (there is a reasonable likelihood that the harm will recur or continue).

10. *Id.* § 6002.1 (records requirements).

11. *Id.* § 6007(c)(1).

12. *Id.* § 6007(d). Inactive enrollment may be ordered for probation violations if the following occurrences are found: (1) the attorney is subject to a suspension order which has been stayed during probation, (2) probation has been violated, and (3) the Board has recommended to the supreme court that the attorney receive an actual suspension due to the probation violation or other disciplinary matter. *Id.*

13. E.g., *Zitny v. State Bar*, 64 Cal. 2d 787, 792, 415 P.2d 521, 524, 51 Cal. Rptr. 825,

Professional Conduct.¹⁴ Furthermore, under existing law the Board is permitted to establish the State Bar Court¹⁵ as the disciplinary arm of the State Bar.¹⁶ Chapter 1114 provides for the hearing of disciplinary proceedings by retired judges,¹⁷ upon a determination by the presiding referee of the State Bar Court that the trial will be complex, will likely exceed one day, or cannot be heard by volunteer referees without undue delay.¹⁸

Chapter 1114 requires the board to appoint an attorney to serve as chief trial counsel for the State Bar.¹⁹ The chief trial counsel will report to, and serve under, the Discipline Committee of the Board, and will be responsible for petitioning the supreme court for dispositions of disciplinary matters different than those recommended by the Board.²⁰ Chapter 1114 also requires the review department or the Board to establish a complainant's²¹ grievance panel.²² The panel will periodically audit dismissals of complaints and the imposition of

828 (1966). "To establish a wilful breach, it must be demonstrated that the person charged acted or omitted to act purposely, that is, that he knew what he was doing or not doing and that he intended either to commit the act or to abstain from committing it." *Id.*; see, e.g., *Millsberg v. State Bar*, 6 Cal. 3d 65, 74, 490 P.2d 543, 549, 98 Cal. Rptr. 223, 229 (1971).

14. See CAL. BUS. & PROF. CODE § 6077; see also *id.* § 6078. See *infra* note 15 (regarding Business and Professions Code §§ 6077 and 6078). See generally 1 B. WITKIN, *supra* note 1, § 309 (the disciplinary proceedings established by the State Bar Act have become virtually the only method for trying accused attorneys). See also *In re Walker*, 32 Cal. 2d 488, 490, 196 P.2d 882, 883 (1948) (court stated "that as a matter of policy" the court should not exercise its disciplinary powers "unless and until" the accuser had first invoked the disciplinary powers and procedures of the State Bar).

15. CAL. ST. B.R. CIV. P. 101 (organization of the State Bar Court). Chapter 1114 limits the membership of the Review Department to eighteen persons, and requires six of those persons to be nonlawyers. CAL. BUS. & PROF. CODE § 6086.6.

16. CAL. BUS. & PROF. CODE § 6086.5. See generally CAL. ST. B.R. CIV. P. 100-104 (general provisions for the State Bar Court). See also 1 B. WITKIN, *supra* note 1, §§ 480-481 (State Bar Court, departments and rules).

17. CAL. BUS. & PROF. CODE § 6079(a) (definition of retired judge).

18. *Id.* § 6079(b). In any case in which a retired judge is not available, the hearing will be assigned to a referee. *Id.* § 6079(c).

19. *Id.* § 6079.5(a). The appointee must not engage in private practice and must be confirmed by the Senate. *Id.* See *id.* § 6079.5(b) (qualifications required for Chief Trial Counsel).

20. *Id.* § 6079.5 (effective July 1, 1987).

21. The court stated that a disciplinary proceeding could be instituted by the filing of a complaint by any person who had knowledge of the facts of an attorney's misconduct, or upon motion of the Board of Governors. See *Tapley v. State Bar*, 8 Cal. 2d 167, 172-73, 64 P.2d 404, 406 (1937). See also CAL. BUS. & PROF. CODE § 6044 (matters within the investigative authority of the State Bar). See generally 1 B. WITKIN, *supra* note 1, §§ 485-486 (complaints to the State Bar). Chapter 475 provides that communications to the State Bar Court concerning lawyer misconduct, disability, or competence, or communications related to an investigation or proceeding, and any testimony given in the proceeding, are privileged. CAL. BUS. & PROF. CODE § 6094(a).

22. CAL. BUS. & PROF. CODE § 6086.8. The committee consists of seven members, four attorneys and three nonattorney members. *Id.*

admonitions, and review such actions upon a request for review by a complainant.²³ The panel will have the power to order a rehearing or further investigation, or to recommend the filing of a notice to show cause²⁴ or the taking of other formal disciplinary action.²⁵ Chapter 1114 further states that the Board may provide by rule that in a disciplinary proceeding, alleged facts will be considered admitted upon the attorney's failure to answer, to appear at a formal hearing, or to deny matters specified in a request for admissions.²⁶ The admission will be removed if, within thirty days of notice that alleged facts are considered admitted, a satisfactory showing that the admissions were the result of mistake or excusable neglect is made, and the facts are actually denied.²⁷

Existing law imposes several specified duties upon attorneys.²⁸ Chapter 475 imposes the following additional duties: (1) to maintain on official membership records all required information,²⁹ (2) to comply with probation conditions, (3) to keep all agreements made in lieu of disciplinary prosecution, (4) to respond promptly to reasonable status inquiries of clients and to keep clients reasonably informed of significant developments in their cases, and (5) to report to the State Bar Court specified information.³⁰ Chapter 1114 also

23. *Id.* § 6086.8(a), (b).

24. Formal proceedings begin with the issuance of a notice to show cause to the member in question. The notice must cite the statutes, rules, or court orders allegedly violated, and state specifically the actions serving as the basis of the violation. CAL. ST. B.R. CIV. P. 550; *see also id.* 510 (issuance of a notice to show cause). *See generally* 1 B. WITKIN, *supra* note 1, § 493 (notice to show cause and commencement of formal proceedings).

25. CAL. BUS. & PROF. CODE § 6086.8(a), (b).

26. *Id.* § 6088.

27. *Id.*

28. *Id.* § 6068. Specified duties include the following: (1) to support the Constitution and laws of the United States and of this state; (2) to respect the courts and judicial officers; (3) to counsel or maintain only legal or just actions, except when defending against a public charge; (4) to never attempt to mislead any judicial officer by an artifice or false statement of fact or law; (5) to maintain inviolate the confidence of the client; (6) to abstain from the use of offensive personality and the advancement of prejudicial facts toward a party or witness, unless required to do so by the justice of the cause; (7) not to encourage, in any way, actions or proceedings for a corrupt motive; (8) to protect the causes of the defenseless and oppressed; and (9) to cooperate and participate in any disciplinary action pending against the attorney. *Id.* § 6068(a)-(i).

29. *Id.* § 6068(j). *See supra* notes 1-5 and accompanying text.

30. CAL. BUS. & PROF. CODE § 6068(j)-(n). Specified information includes: (1) the filing of 3 or more suits in a 12-month period against the attorney for malpractice or other wrongful conduct; (2) the entry of a judgment against the attorney in any civil action for fraud, misrepresentation, breach of fiduciary duty, or gross negligence committed in a professional capacity; (3) the imposition of any judicial sanctions, except sanctions for failure to make discovery or sanctions of less than \$1,000; (4) any felony charge against the attorney; (5) the conviction of the attorney for any felony or misdemeanor committed in any manner such that

requires a court to report to the State Bar any reversal of judgment in a proceeding based upon the misconduct, grossly incompetent representation, or willful misrepresentation by an attorney.³¹ Chapter 1114 further requires a court to report the imposition of most judicial sanctions against the attorney.³² Finally, the court must also notify the attorney involved that the matter has been referred to the State Bar.³³

Chapter 475 further provides several additional provisions dealing with attorney discipline.³⁴ The first such provision provides for the suspension, disbarment, or other discipline of any member who requires, as a settlement condition in a civil action for professional misconduct, that the plaintiff agree not to file a complaint with the disciplinary agency.³⁵ Chapter 475 requires the State Bar to investigate complaints filed by clients alleging the mishandling of trust funds, and authorizes the State Bar to require an audit if necessary.³⁶ Similarly, the attorney is required to provide the client a complete statement of the funds received and disbursed, and any charges upon the account, within ten days of receipt of the client's written request.³⁷ Chapter 475 also specifies the following as duties of the State Bar Court: (1) prompt notification to the complainant of the disposition of each matter; (2) notification to specified authorities³⁸ of a lawyer's involuntary enrollment as an inactive member and termination of that enrollment, or any suspension or disbarment, and subsequent reinstatement; (3) the forwarding of a certified copy of any judgment of conviction to the disciplinary agency in each jurisdiction in which the lawyer is admitted; (4) the maintenance of permanent records of

a client was a victim, or a necessary element of which involves moral turpitude; (6) the imposition of discipline against the attorney by *any* professional or occupational disciplinary agency or licensing board; and (7) reversal of judgment in a proceeding based upon misconduct, grossly incompetent representation, or willful misrepresentation by an attorney. *Id.* § 6068(n)(1)-(7).

31. *Id.* § 6089(a) (effective July 1, 1987). A reversal of judgment must be reported when the reversal was based either in whole or in part upon the attorney's misconduct. *Id.*

32. *Id.* § 6089(b) (effective July 1, 1987). Sanctions for failure to make discovery or monetary sanctions of less than \$1,000 are not required to be reported. *Id.*

33. *Id.*

34. 1986 Cal. Stat. ch. 475, sec. 4, at

35. CAL. BUS. & PROF. CODE § 6090.5.

36. *Id.* § 6091.

37. *Id.* Trust account statements may only be requested once every 30 days, unless the State Bar determines more statements are warranted. *Id.*

38. Specified authorities include the following: (1) the presiding judge of the superior court in the county where the attorney maintained his office, (2) the local bar association for that county, and (3) the disciplinary authority in any other jurisdiction where the attorney is admitted to practice. *Id.* § 6092.5(b).

disciplinary matters; (5) the removal of State Bar records as ordered by the supreme court; (6) the undertaking of investigations assigned by the supreme court; (7) the providing of information to prospective complainants;³⁹ (8) the providing of information to public and local bar associations about the State Bar Court's responsibilities and the right of *all* persons to make a complaint; and (9) the making of agreements with members instead of disciplinary proceedings.⁴⁰ Further, Chapter 475 requires the State Bar Court to (1) notify complainants of the status of their complaint upon request; (2) provide a written summary of any response to the complaint by the attorney, if the response was the basis for dismissal of the complaint; (3) provide the complainant with written notification of the disposition of the complaint, and the reasons for the disposition; (4) notify complainants of appropriate procedures and time limitations⁴¹ available to persons dissatisfied with a complaint's disposition; and (5) acknowledge the receipt of a written complaint within two weeks of receiving the complaint.⁴²

Chapter 662 requires attorneys who have been publicly reprimanded, suspended, or disbarred to pay for the costs of their disciplinary proceedings.⁴³ These costs include the following: Court reporter and transcript fees;⁴⁴ all expenses recoverable in a civil proceeding;⁴⁵ and reasonable costs of investigations, hearings, and reviews.⁴⁶ Chapter 662 allows an attorney to be granted relief, in whole or in part, from an order assessing costs, or the attorney may be granted an extension of time to pay the costs, if hardship, special circumstances, or other good cause is shown.⁴⁷ Chapter 662 further entitles an attorney, judged innocent of all charges, to reimbursement

39. *Id.* § 6092.5(g) (information regarding the nature and procedures of the disciplinary system, the criteria for prosecution of complaints, the client security fund, and fee arbitration procedures).

40. *Id.* § 6092.5.

41. Within 10 days after service upon the attorney of the decision of the disciplinary proceedings, either party may serve and file a written statement requesting reconsideration of the decision. CAL. ST. B.R. CIV. P. 562.

42. CAL. BUS. & PROF. CODE § 6093.5. Chapter 475 provides that a *goal and policy* of the State Bar Court will be to either dismiss a complaint, admonish the attorney, or file a notice to show cause within six months of receipt of a complaint. The goal and policy is not jurisdictional and will not serve as a bar or defense to any disciplinary proceeding. *Id.* § 6094.5(a).

43. *Id.* § 6086.10(a) (a disciplined member will be directed to pay such costs by either the State Bar or the supreme court).

44. *Id.* § 6086.10(b)(1).

45. *Id.* § 6086.10(b)(2).

46. *Id.* § 6086.10(b)(3) (does not include attorney's fees).

47. *Id.* § 6086.10(c).

of reasonable defense expenses from the State Bar.⁴⁸ Any costs assessed against a publicly reprimanded or suspended member are added to, and must be paid with, the next year's membership fees,⁴⁹ while disbarred members must pay the costs as a condition of reinstatement.⁵⁰

FEE AGREEMENTS

Chapter 475 clarifies existing law by providing that contingency fee contracts be in writing and include all of the following:⁵¹ (1) a statement of the agreed upon contingency rate, (2) a statement regarding how disbursements and costs incurred in connection with the prosecution or settlement of the claim will affect the fee and the client's recovery, (3) a statement as to what extent the plaintiff may be required to pay compensation to the attorney for matters not covered by the contingency fee contract,⁵² and (4) a statement that the fee is not set by law but is negotiable.⁵³ Existing law further provides that the agreement is voidable at the plaintiff's option, upon a failure of the contract to meet any of these provisions.⁵⁴

Chapter 475 expands existing law by additionally requiring written contracts when a contingency fee is not being used, and there is a *reasonable foreseeability* that the total expense to the client will exceed \$1,000.⁵⁵ Chapter 475 requires the contract to include all of the following: (1) the hourly rate and other standard fees applicable to the case, (2) the general nature of the legal services to be provided, and (3) the respective responsibilities of the attorney and the client.⁵⁶ Chapter 475 further provides that all bills for services rendered must state the amount, rate, and basis for calculation, and upon the

48. *Id.* § 6086.10(d) (does not include attorney's fees nor expert's fees).

49. *Id.* § 6140.7. Failure to pay any fees or costs will, after two months written notice, result in a suspension of membership. *Id.* § 6143. See generally 1 B. WITKIN, *supra* note 1, § 281 (fee requirements).

50. CAL. BUS. & PROF. CODE § 6140.7.

51. Compare *id.* § 6147(a) with 1982 Cal. Stat. ch. 415, sec. 2, at 1761 (enacting CAL. BUS. & PROF. CODE § 6147).

52. CAL. BUS. & PROF. CODE § 6147(a)(3) (may include any amounts collected for the plaintiff by the attorney).

53. *Id.* § 6147(a). A statement of the maximum limits for the contingency fee agreement must be provided when the contingency fee contract's rates are for an attorney's services seeking damages in a medical malpractice suit. *Id.* § 6147(a)(5). See generally 1 B. WITKIN, *supra* note 1, § 153 (fee limits in medical malpractice cases).

54. *Id.* § 6147(b) (the attorney will then be entitled to collect a reasonable fee).

55. *Id.* § 6148(a).

56. *Id.* § 6148(a)(1)-(3).

client's request, the attorney must, within ten days, provide a bill.⁵⁷ Under Chapter 475, a failure to comply with any of these provisions renders the agreement voidable at the client's option.⁵⁸ Chapter 475 lists emergency services,⁵⁹ fee arrangements implied by previously performed services of a similar nature, written statements by the client stating that a written contract concerning fees is not required,⁶⁰ and agreements with corporate clientele as exceptions to the written contract requirements.⁶¹ Finally, Chapter 475 provides that a written fee contract is a confidential communication.⁶²

JTK

57. *Id.* § 6148(b) (the client is entitled to request a bill every 30 days).

58. *Id.* § 6148(c) (the attorney will then be entitled to collect a reasonable fee).

59. *Id.* § 6148(d)(1) (given to avoid foreseeable prejudice to the client's rights or interests or where a writing is impracticable).

60. *Id.* § 6148(d)(3) (if done by the client after full disclosure of the law).

61. *Id.* § 6148(d).

62. *Id.* § 6149. *See* CAL. EVID. CODE § 952 (definition of confidential communication).

Business Associations and Professions; attorneys— communication of settlement offers

Business and Professions Code § 6103.5 (new); Evidence Code
§ 822 (amended).

SB 906 (Lockyer); 1986 STAT. CH. 1238

Chapter 1238 codifies section 5-105 of the California Rules of Professional Conduct¹ by requiring all members of the California State Bar to promptly communicate to their clients² any written offer of settlement³ made by an opposing party.⁴ Chapter 1238 also makes this settlement offer discoverable by either party.⁵

MWL

1. CALIFORNIA STATE BAR ACT & RULES OF PROFESSIONAL CONDUCT Rule 5-105 (1986).

2. CAL. BUS. & PROF. CODE § 6103.5(a) (client includes any person who employs a member of the State Bar or any person who is a member of the class in a class action).

3. *Id.* (includes all amounts, terms, and conditions of any written offer of settlement).

4. *Id.* Compare *id.* § 6077 (for willful breach of the rules of professional conduct, members of the bar may be disciplined by removal or recommendation of suspension from practice not to exceed three years) with *id.* § 6100 (for any violation of this article of the code, an attorney may be disbarred or suspended by the supreme court).

5. *Id.* § 6103.5(b).

Business Associations and Professions; attorney's fees

Civil Code § 1717.5 (new).

SB 1934 (Deddeh); 1986 STAT. Ch. 884

Existing law provides that, in any action on a contract in which the contract specifically provides for costs and attorney's fees to be awarded to one of the parties, the prevailing party is entitled to reasonable attorney's fees and costs, whether or not that party is specified in the contract.¹ Chapter 884 entitles the prevailing party to reasonable attorney's fees² and costs in any action on a contract based on a book account,³ in which the contract does not provide for attorney's fees and costs, unless such fees and costs are otherwise provided by law or have been waived by the parties to the agreement.⁴

Chapter 884 does not apply to any action in which an insurance company, a bank, or a bank holding company is a party.⁵ Furthermore, insurance companies, sureties, and guarantors are not liable under Chapter 884 without a specific contractual provision requiring that the attorney's fees and costs be awarded to a prevailing party against their insured.⁶

AV

1. CAL. CIV. CODE § 1717.

2. Reasonable attorney's fees awarded pursuant to this section shall not exceed the lesser of \$500 or 25% of the principal obligation owing under the contract. *Id.* § 1717.5.

3. CAL. CIV. PROC. CODE § 337a (definition of book account).

4. CAL. CIV. CODE § 1717.5.

5. *Id.* Chapter 884 also does not apply to any action in which a subsidiary of a bank or holding company, a savings association, federal association, a subsidiary of an association, or a holding company of an association is a party. *Id.*

6. *Id.*

Business Associations and Professions; credit unions

Financial Code §§ 14753, 14754, 14755, 14756, 14757, 14758, 14759, 14760, 14761, 14762, 14763, 14764, 14765, 14766 (new); § 14752 (amended).

AB 3017 (Lancaster); 1986 STAT. Ch. 673

Sponsor: Department of Corporations

Support: California Credit Union League

Under existing law, any director, officer, credit union committee

member, loan officer,¹ or employee of a credit union² who knowingly makes an illegal loan³ that does not conform with credit union law requirements is guilty of a misdemeanor.⁴ Any officer who makes an illegal loan is primarily liable to the credit union for the amount of the loan.⁵ Furthermore, the willful violation of any provision of credit union law is punishable as a misdemeanor or felony.⁶ Chapter 673 expands existing law by making specified insider transactions punishable as a felony,⁷ and other insider activity punishable as a misdemeanor.⁸

Chapter 673 makes the following activities by credit union directors, officers, or employees punishable as a felony: (1) the making or attempted making of loans from the credit union, the permitting of account overdrawing, or the purchasing or discounting of credit union notes, for which the agent receives a kickback;⁹ (2) the intentional overdrawing of a personal account with the credit union, except if approved in advance;¹⁰ (3) the knowing receipt of credit union property with the intent to defraud the company, or omitting to enter the received property in the credit union's accounts;¹¹ (4) the making and publishing of written false statements concerning the credit union's financial condition, the willful refusal or neglect to make proper entries in the company books, or the refusal to allow the books to be inspected;¹² (5) the willful misapplication of credit union funds or property;¹³ (6) the depositing or attempted depositing

1. CAL. FIN. CODE § 14602 (powers and duties of credit committee, credit manager, and loan officers; approval of loans or extension of credit).

2. *Id.* § 14002 (nature and purpose of a credit union).

3. An illegal loan is a loan which is made to a nonmember of the credit union or one which does not conform to state requirements for credit unions. *Id.* § 14750.

4. *Id.* See CAL. PENAL CODE § 17 (definition of misdemeanor).

5. CAL. FIN. CODE § 14751. See generally *Emerging Doctrines of Fiduciary Responsibility of Credit Union Officials*, 40 BUS. LAW. 957 (1985).

6. CAL. FIN. CODE § 14752. Upon conviction, violators may be fined not more than \$10,000, imprisoned in the state prison or county jail for not more than one year, or punished by both fine and imprisonment. *Id.* Cf. *id.* § 14051 (a person who willfully circulates false information regarding the financial condition of a credit union is guilty of a misdemeanor). See CAL. PENAL CODE § 17 (classification of offenses).

7. CAL. FIN. CODE §§ 14753-14759 (activities punishable as a felony).

8. *Id.* §§ 14760-14763 (activities punishable as a misdemeanor).

9. *Id.* § 14753. Cf. *id.* § 3350 (bribery of bank officers and employees punishable as a felony).

10. *Id.* § 14754. See also *id.* § 14603 (advance approval of credit extension). Cf. *id.* § 3351 (overdrafts by bank officers and employees punishable as a felony).

11. *Id.* § 14755. Cf. *id.* § 3352 (receipt of bank property with intent to defraud punishable as a felony).

12. *Id.* § 14756. Cf. *id.* §§ 3368 (false entries or the failure to make entries in bank records punishable as a felony); 3369 (false statements or rumors regarding the financial condition of a bank punishable as a misdemeanor).

13. *Id.* § 14757. Cf. *id.* § 3361 (misapplication of bank assets punishable as a felony).

of credit union funds with an intermediary on the condition that the intermediary will make a loan to the agent;¹⁴ and (7) the willful making of a false statement in the credit union records with the intent to deceive an examiner.¹⁵

Chapter 673 makes the following acts punishable as a misdemeanor: (1) a director's participation in the fraudulent insolvency of the credit union;¹⁶ (2) the director's willful violation of the law, or willful omission to perform a duty imposed by law;¹⁷ (3) the guaranteeing of a credit union loan or note beyond the lawful amount the credit union may make;¹⁸ (4) the knowing participation in the making of a loan or discount to a credit union director which exceeds the legal amount allowed;¹⁹ and (5) the intentional concealment of, or failure to report, loans or discounts made between board meetings from the directors of the credit union.²⁰

Finally, Chapter 673 prohibits the unauthorized²¹ purchase by a credit union of real or personal property, notes, or bonds in which an officer, director, or employee has an interest.²² Chapter 673 also prohibits the purchase of the credit union's assets for less than current market value,²³ and the purchase of credit union obligations or assets for less than book value, unless previously approved by all of the directors of the credit union.²⁴

KGM

14. *Id.* § 14758. *Cf. id.* § 3365 (deposit of bank funds on condition of a loan punishable as a felony).

15. *Id.* § 14759. The willful alteration, concealment, and destruction of credit union files is punishable as a felony. *Id. Cf. id.* § 3368 (concealment, alteration, or destruction of bank records punishable as a felony).

16. *Id.* § 14760(a)(1). *Cf. id.* § 3362(a) (participation in the fraudulent insolvency of a bank punishable as a misdemeanor). *See id.* § 14760(b). The insolvency of a credit union is deemed fraudulent for the purposes of Chapter 673, unless, upon investigation, the insolvency appears to have been lawfully administered with due care. *Id.*

17. *Id. Cf. id.* § 3362(b) (illegal act or omission by director punishable as a misdemeanor).

18. *Id.* § 14761. *Cf. id.* § 3363 (guaranty or endorsement of bank loans beyond the legal limit punishable as a misdemeanor).

19. *Id.* § 14762. *Cf. id.* § 3364 (participation of a bank director in illegal loans punishable as a misdemeanor).

20. *Id.* § 14763. The failure to report a purchase or sale of securities made between board meetings is punishable as a misdemeanor. *Id. Cf. id.* § 3366 (concealment of bank transactions from directors punishable as a misdemeanor).

21. *Id.* § 14764 (written authority must come from the Commissioner of Corporations). *See also id.* § 14208 (administrative authority of the Commissioner).

22. *Id.* § 14764. *Cf. id.* § 3354 (extension of credit to companies in which the majority interest is owned by bank executive officers).

23. *Id.* § 14765. Violators of this section are liable to the State for an amount equal to twice the market value of the asset. *Id. Cf. id.* § 3355 (purchase of bank assets by officers or employees at less than market value).

24. *Id.* § 14766. Violators of this section are liable to the State for an amount equal to twice the face value of the asset. *Id. Cf. id.* § 3356 (purchase of bank assets by officers or employees at less than face value).

Business Associations and Professions; dentistry—conscious sedation

Business and Professions Code §§ 1646.11, 1647, 1647.1 (new); § 1646 (amended).

AB 1267 (Tucker); 1986 STAT. Ch. 1382

Sponsor: California Dental Association

Under existing law, a dentist¹ cannot administer general anesthesia² on an outpatient basis until the dentist obtains a permit³ from the Board of Dental Examiners (the Board).⁴ As a condition of permit renewal, Chapter 1382 requires practicing dentists to complete approved courses⁵ in general anesthesiology.⁶ By enacting Chapter 1382, the legislature intends to maintain the high patient safety record in the administration of patient sedation by requiring increased educational standards for the administration of all levels of patient sedation.⁷

The legislature also finds and declares that, in dental practice, a continuum of sedation is used which results in different states of consciousness that may not be predictable in every instance.⁸ Because these various levels of sedation are not adequately defined under existing law,⁹ Chapter 1382 revises the definition of general anesthesia to mean a controlled state of depressed consciousness or unconsciousness, accompanied by a partial or complete loss of protective reflexes.¹⁰ In addition, Chapter 1382 defines conscious sedation¹¹ to mean a minimally depressed level of consciousness

1. CAL. BUS. & PROF. CODE § 1625 (dentistry and the practice of dentistry defined). *See also id.* § 1626 (practices exempted from dentistry licensing requirements).

2. General anesthesia consists of the use of any drug or other material which results in the elimination of all sensations, accompanied by a state of unconsciousness. *Id.* § 1646.

3. A dentist possessing a permit to administer general anesthesia is subject to review by the Board, and the permit must be renewed annually. *Id.* § 1646.1. *See also id.* § 1646.2 (application process and requirements for receiving a permit).

4. *Id.* § 1646.1. *See id.* § 1601 (Board of Dental Examiners in general).

5. The courses of study must not exceed 15 hours in duration. *Id.* § 1646.11.

6. *Id.* *Cf. id.* § 1646.6 (permit renewal requirements).

7. *Id.* § 1647(a), (c). The degrees of sedation have been referred to as "deep conscious sedation" and "light general anesthesia." *Id.* § 1647(c).

8. *Id.* § 1647(b)(2), (3).

9. *Id.* § 1647(b)(2) (various levels of sedation cannot adequately be defined in terms of consciousness and general anesthesia).

10. *Id.* § 1646. *See also supra* note 7 (degrees of sedation).

11. Compare 1979 Cal. Stat. ch. 886, sec. 1, at 3071 (enacting CAL. BUS. & PROF. CODE § 1646(b)) (definition of a conscious patient) with CAL. BUS. & PROF. CODE § 1647.1(a) (definition of conscious sedation).

that retains the patient's ability to maintain an airway, and to respond to physical stimulation and verbal command.¹² The margin of safety used in conscious sedation should be wide enough to result in a predictable level of consciousness, thereby rendering unintended loss of consciousness unlikely.¹³ Finally, a minimally depressed level of consciousness should be maintained when administering anesthesia to a very young or handicapped person.¹⁴

KGM

12. *Id.* § 1647.1(a). Conscious sedation does not include conditions resulting from the administration of oral medications or from the administration of a mixture of nitrous oxide and oxygen. *Id.*

13. *Id.* § 1647.1(b).

14. *Id.* § 1647.1(c).

Business Associations and Professions; director's liability

Corporations Code § 5231.5 (new).

SB 2154 (Presley); 1986 STAT. CH. 720

Sponsor: United Way of California

Support: Department of Parks and Recreation

Opposition: California Trial Lawyers Association

Under existing law, except for certain self-dealing transactions,¹ a director² of a nonprofit public benefit corporation³ who fails to perform the duties of a director, as set forth by the corporation bylaws or the board of directors,⁴ is not liable if the duties are performed (1) in good faith, (2) in a manner believed by the director to be in the best interests of the corporation, and (3) with the same amount of care that an ordinarily prudent person would use in a similar situation.⁵ Chapter 720 expands existing law by providing that no monetary liability or cause of action for damages will arise against any nonpaid director⁶ of a nonprofit public benefit corporation, if the person's duties as director are performed in a manner that meets

1. CAL. CORP. CODE § 5233 (definition, limitations, and exceptions for self-dealing transactions).

2. *Id.* § 5047 (definition of director).

3. *Id.* § 5060 (definition of nonprofit public benefit corporation).

4. *Id.* § 5213 (corporation officers and their duties).

5. *Id.* § 5231(a).

6. *Id.* § 5231.5 (including any nonpaid director who is also a nonpaid officer).

the existing standard of care.⁷ The extended immunity provided by Chapter 720 does not apply to certain self-dealing transactions,⁸ and does not apply to certain distributions, loans, or guarantees.⁹

JTK

7. *Id.*

8. *Id.* § 5233.

9. *Id.* § 5231.5. See *id.* § 5237 (distribution, loan, or guarantee liability; actions and damages).

Business Associations and Professions; financial institution fraud

Financial Code § 15102 (new); §§ 779, 7460 (amended).

AB 3103 (Bane); 1986 STAT. Ch. 173

Sponsor: California League of Savings Institutions

Support: Department of Savings and Loan; Department of Real Estate; Department of Corrections

Existing law allows a state or nationally chartered bank,¹ a loan association,² or any successor in interest, that originates a loan, to bring an action against a borrower³ to recover actual damages and limited exemplary damages⁴ when the action is based on fraud,⁵ and the borrower's fraudulent conduct induced the original lender to make the loan.⁶ Chapter 173 extends the right⁷ to an action based on a

1. CAL. FIN. CODE § 779(a) (including bank subsidiaries or affiliates transacting business in California).

2. *Id.* § 7460(a) (includes federal associations).

3. Only one form of action may be used to recover a debt which is secured by a mortgage upon real property. CAL. CIV. PROC. CODE § 726(a). The cause of action belonging to a lender under Chapter 173 is separate from and may be in addition to that defined in Code of Civil Procedure § 726. CAL. FIN. CODE §§ 779(a), 7460(a), 15102(a). Also, this cause of action does not constitute a deficiency judgment within the meaning of Code of Civil Procedure §§ 580(a) (procuring a judgment secured by real property); 580(b) (when deficiency judgment does not lie); or 580(d) (no deficiency on sale under deed of trust or mortgage). CAL. FIN. CODE §§ 779(c), 7460(c), 15102(c). Compare CAL. FIN. CODE §§ 779, 7460, 15102 (allowing additional recovery based on fraud) with *First Fed. Sav. & Loan Ass'n v. Lehman*, 159 Cal. App. 3d 537, 539, 205 Cal. Rptr. 600, 602 (1984) (barring recovery in a deficiency judgment once property is foreclosed). A lender is prohibited from bringing an action for fraudulent conduct against a single family, which owns and occupies the residential real property used to secure a loan, when the loan is for an amount of \$150,000 or less as adjusted annually by the Consumer Price Index. CAL. FIN. CODE §§ 779(b), 7460(b), 15102(b).

4. Exemplary damages may not exceed 50% of the actual damages. CAL. FIN. CODE §§ 779(a), 7460(a).

5. CAL. CIV. CODE § 1572 (definition of fraud).

6. CAL. FIN. CODE §§ 779(a), 7460(a).

7. See *supra* note 4 (limitations on the right).

borrower's fraudulent conduct to an entity which acquires or purchases a loan or an interest therein,⁸ and to a service corporation,⁹ an affiliate of a federal savings and loan association,¹⁰ a credit union or affiliate,¹¹ a credit union service organization,¹² or any successor in interest.¹³

SER

8. CAL. FIN. CODE §§ 779(a), 7460(a), 15102(a).

9. *Id.* § 7460(a).

10. *Id.*

11. *Id.* § 15102(a).

12. *Id.*

13. *Id.* §§ 7460(a), 15102(a). Chapter 173 states that a successor in interest must originate, acquire, or purchase, in whole or in part, any loan secured directly or collaterally, in whole or in part, by a mortgage or deed of trust on real property, or any interest therein. *Id.*

Business Associations and Professions; limited partnerships— certificates

Corporations Code §§ 15622, 15625 (amended).

AB 3901 (Stirling); 1986 STAT. CH. 344

Sponsor: Secretary of State

Under existing law, an amendment¹ to a limited partnership certificate² must be acknowledged³ by all general partners,⁴ unless otherwise specified.⁵ Under Chapter 344, the amendment must also be acknowledged by each new general partner designated in the certificate.⁶

Existing law allows any general partner to prepare, execute, or file a certificate of amendment if the appointed general partner fails to do so within a reasonable time.⁷ Chapter 344 expands existing law

1. CAL. CORP. CODE § 15525 (requirements for amendment or cancellation of a certificate of limited partnership).

2. To form a limited partnership, the partners must execute a partnership agreement and the general partners must execute, acknowledge, and file a certificate of limited partnership. *Id.* § 15621(a). *See also id.* § 15502 (formation of a limited partnership). A limited partnership is a partnership formed by two or more persons, having as members one or more general partners and one or more limited partners. *Id.* § 15501. The limited partners shall not be bound by the obligations of the partnership. *Id.* *See also id.* § 15507 (liability of limited partners to creditors).

3. *Id.* § 15611(a) (definition of acknowledged).

4. A general partner is a person who has been admitted to a limited partnership as a general partner in accordance with the partnership agreement. *Id.* § 15611(g).

5. *Id.* § 15622(a).

6. *Id.* New general partners need not acknowledge an amendment certificate if the certificate is filed by a substitute partner. *Id.*; *see id.* § 15625 (substitute filing procedure).

7. *Id.* § 15625 (substitute execution and filing).

by allowing any partner⁸ to assume the filing duties regarding limited partnership, dissolution, or cancellation certificates.⁹ Furthermore, Chapter 344 authorizes any person appointed by a court of competent jurisdiction to prepare, execute, and file the above certificates.¹⁰ Finally, Chapter 344 clarifies existing law by stating that any general partner who executes and files a certificate containing statements materially inconsistent with the partnership agreement will be liable for any losses resulting from the misstatement.¹¹

KGM

8. Partner means a limited or general partner. *Id.* § 15611(m).

9. *Id.* § 15625. See also *id.* § 15623 (filing certificates of dissolution and cancellation).

10. *Id.* § 15625. These certificates are filed with the Secretary of State. *Id.*

11. *Id.* § 15622(d). Liability will result only if the general partner knew or should have known of the misstatement. *Id.*

Business Associations and Professions; nurses—dispensing of drugs

Business and Professions Code §§ 2725.1, 2836.1, 2836.2, 2836.3, 4051.5, 4051.6 (new); §§ 4036, 4213, 4228 (amended).

AB 4372 (Isenberg); 1986 STAT. Ch. 493

Sponsor: California Nurse Association; Health Officers Association of California

Support: California Medical Association

Opposition: Committee on Moral Concerns

Existing law limits the authority to dispense drugs or devices to physicians and podiatrists.¹ In 1974, the legislature recognized that the practice of nursing is a dynamic field, with overlap between registered nurses² and physicians.³ This overlap, however, did not include the dispensing of drugs or devices.⁴ Chapter 493 expands existing law by allowing registered nurses to dispense drugs in a clinic,⁵ upon an order by a physician.⁶ A registered nurse, however, may not be employed by a clinic for the sole purpose of dispensing

1. CAL. BUS. & PROF. CODE § 4051(a).

2. *Id.* § 2725 (definition of nursing).

3. *Id.* See generally 64 Op. Att'y Gen. 240, 256 (1981) (nurses are not authorized to dispense or furnish drugs or devices).

4. 64 Op. Att'y Gen. 240, 256 (1981).

5. CAL. HEALTH & SAFETY CODE §§ 1204(a)(1), (2); 1206(b), (c) (definition of clinics).

6. CAL. BUS. & PROF. CODE § 2725.1. Registered nurses, however, are prohibited from dispensing any drugs included in the California Uniform Controlled Substances Act. *Id.* See CAL. HEALTH & SAFETY CODE §§ 11000-11650 (Uniform Controlled Substances Act).

drugs.⁷ Through Chapter 493, the legislature intends that patients be provided with appropriate educational information about any drugs or devices dispensed by the nurses.⁸

Chapter 493 further provides that a nurse practitioner⁹ may furnish drugs or devices¹⁰ after the Board of Registered Nursing¹¹ issues a number to the nurse applicant.¹² Once issued, these numbers may be renewed with the registered nurse's license, and may be revoked, suspended, or denied by the Board of Registered Nursing for gross negligence or incompetence.¹³

MWL

7. CAL. BUS. & PROF. CODE § 2725.1. A registered nurse is further restricted from dispensing drugs in a pharmacy; keeping a pharmacy, open shop, or drugstore for the retailing of drugs or poisons; or compounding drugs. *Id.*

8. 1986 Cal. Stat. ch. 493, sec. 9.5, at

9. *Id.* § 2835.5 (qualification requisites for nurse practitioner).

10. *Id.* § 2836.1(a)-(g) (nurse practitioner may only furnish drugs or devices under specified circumstances). Furnishing drugs or devices means making a pharmaceutical agent or agents available to a patient in accordance with a standardized procedure. *Id.* § 2836.2.

11. *Id.* § 2701 (Board of Registered Nursing in general).

12. *Id.* § 2836.3(a). The number may only be issued upon the successful completion of at least six months of physician-supervised experience in the dispensing of drugs or devices, and a course in pharmacology. *Id.* § 2836.1(g).

13. *Id.* § 2836.3(b), (c).

Business Associations and Professions; Robbins-Vuich-Calderon Financial Institutions Act of 1986

Financial Code §§ 22, 3750, 3751, 3752, 3753, 3754, 3755, 3756, 3757, 3758, 3759, 3760, 3761, 3770, 3771, 3772, 3773, 3774, 3775, 3776, 3777, 3778, 3779, 3780, 3781, 10000, 10001, 10002, 10003, 10010, 10011, 10012, 10013 (new); § 3704 (amended).

SB 2300 (Robbins); 1986 STAT. CH. 1250

(Effective July 1, 1987)*

AB 1492 (Calderon); 1986 STAT. CH. 1057

(Effective January 1, 1991)**

FOREIGN BANK HOLDING COMPANIES

Existing federal law prohibits a bank holding company,¹ or any

* Sections 3704, 3770, 3771, 3772, 3773, 3774, 3775, 3776, 3777, 3778, 3779, 3780, 3781, 10010, 10011, 10012 and 10013 of Chapter 1250 become effective on July 1, 1987. These sections expire on January 1, 1991 when Chapter 1057 becomes effective.

** Sections 22, 3704, 3750, 3751, 3752, 3753, 3754, 3755, 3756, 3757, 3758, 3759, 3760, 3761, 10000, 10001, 10002 and 10003 of Chapter 1057 become effective on January 1, 1991.

1. 12 U.S.C. § 1841(a)(1) (1985 Supp.) (definition of bank holding company). *See also*

subsidiary² thereof, from acquiring any voting shares or interest in all, or substantially all, of the assets of an additional bank located in another state,³ unless the acquisition of those shares or assets is specifically authorized by the laws of the state in which the bank is located.⁴ Beginning July 1, 1987, Chapter 1250, the California Inter-state (Regional) Banking Act of 1986⁵ (the Regional Act), empowers the Superintendent of Banks (Superintendent) to authorize a foreign bank holding company⁶ whose operations are principally conducted⁷ in Alaska, Arizona, Colorado, Hawaii, Idaho, Nevada, New Mexico, Oregon, Texas, Utah, or Washington, that is not controlled⁸ by any parent foreign bank holding company⁹ whose operations are not principally conducted in one of these states, to engage in any of the following transactions:¹⁰ (1) cause or permit an existing California bank¹¹ or bank holding company¹² to become a subsidiary,¹³ (2) acquire directly¹⁴ or indirectly¹⁵ more than fifty percent of the assets, or more than five percent of the voting shares, of any California bank or bank holding company,¹⁶ or (3) merge or consolidate with

id. § 1841(a)(2)-(5) (definitions of what does not constitute a bank holding company).

2. *Id.* § 1841(a)(6)(d) (definition of subsidiary).

3. *Id.* § 1842(d) (outside the state in which the operations of the bank holding company's banking subsidiaries were principally located on July 1, 1956, or the date on which the company became a bank holding company, whichever is later). The state in which the operations of a bank holding company's subsidiary are principally conducted is that state in which the total deposits of all such banking subsidiaries are the largest. *Id.*

4. *Id.*

5. CAL. FIN. CODE § 3770.

6. *Id.* § 3771(g) (definition of foreign bank holding company).

7. The state or other jurisdiction in which the operations of a bank holding company are principally conducted is that state or other jurisdiction of the United States in which the total deposits of all of the bank holding company's subsidiary banks are largest. *Id.* § 3772(a).

8. Control means any of the following: (1) direct or indirect ownership of, or power to vote, 25% or more of any class of voting securities of a company, (2) direct or indirect power to control in any manner the election of a majority of directors of a company, or (3) direct or indirect power to exercise in any manner a controlling influence over the management or policies of a company. *Id.* § 3771(f)(1)-(3).

9. *Id.* § 3771(h) (definition of parent foreign bank holding company).

10. *Id.* § 3773.

11. *Id.* § 3771(c) (definition of California bank); *id.* § 3771(b) (definition of bank).

12. *Id.* § 3771(d) (definition of California bank holding company); *id.* § 3771(a) (definition of bank holding company). See also *id.* § 3778 (a foreign bank holding company and its parent that controls a bank organized under the laws of California is deemed to be a bank holding company).

13. *Id.* § 3773(a). See *id.* § 3771(i) (definition of subsidiary).

14. Shares held or controlled, directly or indirectly, by trustees for the benefit of (1) a company, (2) the shareholders or members of a company, or (3) the employees of a company, will be deemed to be controlled by that company. *Id.* § 3772(d). See *id.* § 3771(e) (definition of company).

15. Shares owned and controlled by any subsidiary of a bank holding company will be deemed to be indirectly controlled by such bank holding company. *Id.* § 3772(c).

16. *Id.* § 3773(b).

any California bank or bank holding company.¹⁷ The Regional Act is repealed on January 1, 1991.¹⁸ Beginning January 1, 1991, Chapter 1057, the California Interstate (National) Banking Act of 1986¹⁹ (the National Act), empowers the Superintendent to authorize any foreign bank holding company²⁰ to engage in any of the previously mentioned transactions.²¹

Before authorization may be granted for any of these transactions, the Superintendent must find that there is substantial reciprocity²²

17. *Id.* § 3773(c). Massachusetts and Connecticut have similar statutes which provide that an out-of-state bank holding company with its principal place of business in a New England state may acquire an in-state bank, provided that the other state accords equivalent reciprocal privileges to the enacting state's banking organizations. The Supreme Court upheld the statutes and ruled that the language of 12 U.S.C. § 1842(d) (the Douglas Amendment) plainly permits states to lift the federal ban partially or entirely. The legislative history of the Douglas Amendment indicates that Congress intended to allow each state flexibility in order to retain local, community-based control over banking, contemplating that some states might partially lift the ban on interstate banking without opening themselves up to interstate banking from everywhere. *Northeast Bancorp, Inc. v. Board of Governors of the Fed. Reserve Bd.*, 105 S. Ct. 2545, 2551-53 (1985).

18. CAL. FIN. CODE § 3781.

19. *Id.* § 3750.

20. *Id.* § 3751(g) (definition of foreign bank holding company). *See also id.* § 3758 (a foreign bank holding company and its parent that controls a bank organized under the laws of California is deemed to be a bank holding company).

21. *Id.* § 3753(a)-(c). *See also supra* notes 10-17 and accompanying text. Except as otherwise permitted by Chapters 1250 and 1057, a foreign bank holding company may not engage in any of the following transactions: (1) cause or permit a California bank or bank holding company to become a subsidiary; (2) cause or permit a subsidiary to become a California bank or a bank holding company; (3) acquire direct or indirect ownership of, or power to vote, more than 5% of the voting shares of any California bank or bank holding company; (4) acquire directly or indirectly more than 50% of the assets of any California bank or bank holding company; or (5) merge or consolidate with any California bank or bank holding company. *Id.* §§ 3774, 3754. Nothing in Chapters 1250 or 1057 may be interpreted to affect, to the extent otherwise authorized by the laws of California or the United States, the acquisition of, or merger or consolidation with, a California bank or bank holding company by either (1) a bank that maintains no branch, or (2) a bank holding company that does not control any bank that maintains a branch, within the United States but outside California if the bank or bank holding company is not controlled by a company having the head office located, or principally conducting operations, within the United States. *Id.* §§ 3775, 3755.

22. Substantial reciprocity means (1) that the statute laws of a jurisdiction have the effect of authorizing, for the purposes of subsection (d) of Section 3 of the Bank Holding Company Act of 1956, as amended [12 U.S.C. §§ 1841-1850], and that these laws as interpreted and applied authorize, any California bank holding company to acquire up to 100% ownership (except for directors' qualifying shares) of any bank that maintains its head office in that jurisdiction on terms and conditions substantially the same as terms and conditions pursuant to which a bank holding company located in the jurisdiction may acquire a bank located in the same jurisdiction, and (2) that, under the laws of that jurisdiction as interpreted and applied, banks that maintain their head offices therein, when acquired, directly or indirectly, by any California bank holding company, have substantially all the powers and capabilities, without limitation, restriction or condition, that such a bank would have if it were acquired by a bank holding company the operations of which are principally conducted in the jurisdiction in which the bank maintains its head office.

Id. §§ 3771(j), 3751(j). Nothing in Chapter 1250 or 1057 requires substantial reciprocity with

between California and the jurisdiction or jurisdictions where the operations of the foreign bank holding company²³ are principally conducted,²⁴ and that the transaction will not have an adverse effect on the public convenience or advantage in California.²⁵ Chapters 1250 and 1057 also authorize the Superintendent to provide regulatory agencies of other states and the United States with specified information related to acquisitions under either Chapter.²⁶

Under existing law, the Superintendent is empowered to examine bank holding companies and their subsidiaries by using the Superintendent's examiners, independent public accountants,²⁷ or independent examinations.²⁸ Under both the Regional and National Acts, if the Superintendent's examiners examine a nondomestic bank holding company, the bank holding company is required to pay a fee of \$200 per day for each of the Superintendent's examiners utilized in the examination.²⁹

FOREIGN SAVINGS COMPANIES

Under existing law, no foreign association³⁰ may do any business of a savings association³¹ unless the foreign association was licensed to do so as of September 15, 1935.³² Chapter 1250 provides that beginning on July 1, 1987, a foreign savings company³³ with a home office located in any of the states of Alaska, Arizona, Colorado, Hawaii, Idaho,

respect to any jurisdiction that is not a state or other jurisdiction of the United States. *Id.* §§ 3776(b), 3756(b).

23. *Id.* §§ 3776(b)(1), 3756(b)(1) (including any parent foreign bank holding company of the foreign bank holding company).

24. *Id.*

25. *Id.* §§ 3776(b)(2), 3756(b)(2). An application for approval of such a transaction must contain such information, and will be verified in such manner as the Superintendent may require. The fee for filing such an application under Chapter 1250 or 1057 is \$2,500. *Id.* §§ 3776(a), 3756(a).

26. *Id.* §§ 3779(a), 3759(a). The Superintendent may provide information relating to the following: (1) any foreign bank holding company which has applied for approval to acquire control or that controls a California bank; (2) any California bank or other company which that foreign bank holding company controls or proposes to control; and (3) any parent foreign bank holding company of that foreign bank holding company. *Id.* §§ 3779(a)(1)-(3), 3759(a)(1)-(3).

27. Independent public accountants must be disinterested persons. *Id.* § 3704.

28. *Id.* (independent examinations may be made by any federal agency, any other agency of California, or any agency of any state of the United States).

29. *Id.*

30. *Id.* § 8500 (definition of a foreign association).

31. *Id.* § 5102(a) (definition of a savings association).

32. *Id.* § 8501 (or if the foreign association is an entity arising out of the rehabilitation, readjustment, consolidation, merger, or reorganization of any foreign association licensed as of September 15, 1935). *See also id.* § 8503 (foreign association activities that are not considered to be doing business in California).

33. *Id.* § 10010(c) (definition of foreign savings company).

Nevada, New Mexico, Oregon, Texas, Utah, or Washington, that is not directly or indirectly controlled by a foreign holding company³⁴ with its principal place of deposits³⁵ located outside one of these states, may conduct the business of an association in California upon the written approval of the Savings and Loan Commissioner (Commissioner).³⁶ Upon the expiration of Chapter 1250, and beginning on January 1, 1991, Chapter 1057 provides that any foreign savings company³⁷ may conduct the business of an association in California upon the written approval of Commissioner.³⁸

SDS

34. *Id.* § 10010(b) (definition of foreign holding company).

35. *Id.* § 10010(e) (definition of principal place of deposits).

36. *Id.* §§ 10011, 10012.

37. *Id.* § 10000(c) (definition of foreign savings company). Under both the Regional and National Acts, if the Commissioner determines that the laws, court decisions, or practices of the jurisdiction in which the foreign savings company has its home office would operate to otherwise limit a California savings company from conducting business of a savings association in that jurisdiction, a similar prohibition, restriction, condition, or limitation prescribed by the Commissioner will apply in California to the foreign savings company. *Id.* §§ 10011, 10001.

38. *Id.* § 10001. The Commissioner may make arrangements with the supervisory officials of other states for reciprocal examinations of California and foreign savings companies and the imposition of fees therefor, and may condition approval of the foreign savings company doing business in California as a savings association upon the existence of such arrangements. The Commissioner may also issue any regulations necessary to preserve the public interest and integrity of California's savings association system, and to protect the interests of savings account holders, borrowers, and stockholders residing in California. *Id.* §§ 10012, 10002.

Business Associations and Professions; small business development corporation loans

Corporations Code §§ 14010, 14025, 14035.5, 14081, 14125, 14131 (amended); Government Code § 15328.5 (new).
SB 2326 (Royce); 1986 STAT. Ch. 1195

Existing law provides for the creation of small business development corporations, urban development corporations, and rural development corporations.¹ Existing law also provides for the allocation of funds by the Small Business Development Board to these corporations.² These corporations use the allocated resources as a guarantee for loans made to small businesses.³ Existing law prohibits a

1. CAL. CORP. CODE §§ 14030, 14125.

2. *See generally id.* §§ 14040-14044.

3. *Id.* § 14045.

corporation⁴ from making loans unless certain conditions are met.⁵ Chapter 1195 adds two new restrictions to the offering of loans.⁶ First, a loan will not be made unless the borrower has demonstrated a reasonable prospect of repaying of the loan.⁷ Second, as a result of the loan, the jobs generated or retained by employment incentive borrowers must equal or exceed the number of jobs specified by statute,⁸ or the job generation or retention of small business borrowers demonstrates reasonable conformance to the specified guidelines.⁹ Chapter 1195 expands existing law regarding direct loans by the corporation by allowing the advance of an interim loan to firms who have received a Phase One¹⁰ or Phase Two¹¹ Small Business Innovation Research Grant from a federal agency.¹²

WWO

4. The term "corporation" or the phrase "the corporation" means any nonprofit California small business development corporation. *Id.* § 14010(a).

5. 1981 Cal. Stat. ch. 356, sec. 25, at 1524 (amending CAL. CORP. CODE § 14081). The loan of money is prohibited unless a determination is made that (1) there is no probability that the loan or other financial assistance would be granted by a financial institution under reasonable terms and conditions; (2) the loan proceeds will be used exclusively in the region of the corporation; (3) the loan qualifies as a small business loan or an employment incentive loan; and (4) the borrower has a minimum equity interest in the business as determined by the Small Business Development Board. *Id.* See also CAL. CORP. CODE §§ 14010(b) (definition of financial institution); 14010(e) (definition of region); 14010(g) (definition of employment incentive loan).

6. CAL. CORP. CODE § 14081(a), (e).

7. *Id.* § 14081(a).

8. The statute provides that the loan must result in the new or continued employment of at least 15 persons who are either residing in economically disadvantaged areas or are youths residing in areas of high youth unemployment and high youth delinquency. *Id.* § 14010(g). See also *id.* §§ 14010(c) (definition of economically disadvantaged area); 14010(d) (the Small Business Development Board will decide what constitutes an area of high youth unemployment and high youth delinquency).

9. *Id.* § 14081(e).

10. A Phase One Small Business Innovation Research Grant is a grant designed to research the scientific and technical merit and feasibility of ideas submitted pursuant to solicitations from federal agencies. Small Business Innovation Act of 1982, Pub. L. No. 97-219, § 3(e)(4)(A).

11. A Phase Two Small Business Innovation Research Grant is a grant designed to further develop the proposed ideas in the phase one grant, taking into consideration the scientific and technical merit and the feasibility evidenced by the first phase. *Id.* § 3(e)(4)(B). Federal agencies are authorized to determine the categories of the projects for which grants will be awarded. *Id.* § 4(g)(1). These agencies also have the authority to issue solicitations for the grants and determine which entity will be awarded a Small Business Innovation Research Grant. *Id.* § 4(g)(2).

12. CAL. CORP. CODE § 14131(c). Chapter 1195 also provides that the receipt of an interim loan is allowed only when the applicant for the loan is suffering cash flow problems because of a delay in the receipt of the innovative grant funds. *Id.* § 14131(c). A small business development corporation is only authorized to provide an interim loan for up to 80% of the innovative research project's expenses. *Id.* Moreover, to receive an interim loan pursuant to this chapter, the recipient must assign the grant invoices to the small business development corporation, and the loaning agency must agree to the assignment. *Id.*

Business Associations and Professions; secondhand dealers

Business and Professions Code §§ 21628, 21637, 21638, 21642, 21645, 21647 (amended); Financial Code § 21209 (amended); Penal Code § 1411 (amended).

AB 4299 (Harris); 1986 STAT. Ch. 826

Sponsor: California Collateral Loan Association

Existing law requires secondhand dealers¹ to report to the police all tangible personal property² purchased or taken in trade or pawn.³ Prior to the enactment of Chapter 826, the information taken on such reports was determined by local ordinances.⁴ Chapter 826 preempts local authority and specifies the information that must be contained on each report, including fingerprints of the intended seller or pledgor.⁵ Under existing law, a violation of the law governing secondhand dealers and pawnbrokers constitutes a misdemeanor.⁶ Under Chapter 826, a secondhand dealer or pawnbroker is guilty of a misdemeanor only if the dealer knew or should have known that a violation was being committed.⁷

Under existing law, a peace officer may place a ninety-day hold⁸ on any property held by a pawnbroker⁹ that the peace officer has

1. CAL. BUS. & PROF. CODE § 21626 (definition of secondhand dealer).

2. *Id.* § 21627 (definition of tangible personal property).

3. *Id.* § 21628.

4. *See, e.g.,* Miller v. Murphy, 143 Cal. App. 3d 337, 341-42, 191 Cal. Rptr. 740, 743 (1983) (Business and Professions Code §§ 21625-21647 did not deal directly with what information could be included on the reports, and local authorities could therefore determine the content). *Cf.* CAL. BUS. & PROF. CODE § 21628 (requiring specified information regarding the intended seller and the property).

5. CAL. BUS. & PROF. CODE § 21628. The information must include the following: (1) the name and address of seller or pledger, (2) specified identification, (3) a complete and reasonably accurate description of the property, (4) a certification that the seller is the owner or has authority to sell the property, and (5) a certification that the information given is true to the best of the seller's knowledge. *Id.* § 21628(a)-(f).

6. *Id.* § 21645. A first-time offender may be punished by a fine of not more than \$1,500, by imprisonment in the county jail for not more than 2 months, or both. A second-time offender may be punished by a fine of not more than \$5,000, by imprisonment in the county jail for not more than 4 months, or both. A third or subsequent conviction may be punished by a fine of not more than \$25,000, by imprisonment in the county jail for not more than 6 months, or both. *Id.*

7. *Id. Compare id. with* 1980 Cal. Stat. ch. 499, sec. 17, at 1046 (enacting CAL. BUS. & PROF. CODE § 21645).

8. During the period the property is on hold, the secondhand dealer may not release or dispose of the property, except pursuant to court order or upon receipt of a written authorization signed by any peace officer who is a member of the law enforcement agency which placed the hold on the property. CAL. BUS. & PROF. CODE § 21647(a).

9. *See, e.g.,* SACRAMENTO COUNTY, CAL., CODE § 4.30.010 (1983) Sacramento, Cal., Code § 28.2(e) (1986) (definition of pawnbroker by local ordinances). *See also* BLACK'S LAW DICTIONARY 1015 (5th ed. 1979) (definition of pawnbroker).

probable cause to believe was stolen.¹⁰ Chapter 826 expands existing law to include property held by any secondhand dealer.¹¹ Finally, Chapter 826 provides that if, after a reasonable attempt, the owner of the stolen property could not be notified and the property is no longer needed for criminal proceedings, then the property is to be returned to the secondhand dealer or pawnbroker from which the property was taken.¹²

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10. CAL. BUS. & PROF. CODE § 21647(a).

11. *Id.* Compare *id.* with 1980 Cal. Stat. ch. 256, sec. 1, at 530 (enacting CAL. BUS. & PROF. CODE § 21647).

12. CAL. PENAL CODE § 1411.5.

Business Associations and Professions; smokeless tobacco promotional plans—minors

Business and Professions Code § 17537.3 (new).

AB 4214 (Filante); 1986 STAT. CH. 285

Under existing law, any person, firm, or corporation that sells, gives, or otherwise furnishes tobacco or smoking paraphernalia to a person under the age of eighteen is guilty of a misdemeanor.¹ Chapter 285 prohibits any person from offering promotional smokeless tobacco products² which require proof of purchase,³ unless: (1) the offer is designated as not available to minors, and (2) all mail-in coupons contain a statement requesting purchasers to verify they are eighteen years of age or older.⁴ Under Chapter 285, a person may not honor mail-in or telephone requests for promotional smokeless tobacco products unless appropriate steps⁵ have been taken to ascertain that the purchaser is over eighteen years of age.⁶ In addition, Chapter 285 forbids the distribution, by any means, of free samples

1. CAL. PENAL CODE § 308.

2. CAL. BUS. & PROF. CODE § 17537.3(a) (as part of an advertising plan or program).

3. *Id.* (proof of purchase must be of a smokeless tobacco product).

4. *Id.*

5. *Id.* § 17537.3(b) (includes, but is not limited to, requesting a purchaser's birth date).

6. *Id.*

of smokeless tobacco products within a two block radius of any premises or facilities used primarily by persons under eighteen years of age.⁷ Furthermore, Chapter 285 prohibits the distribution of unsolicited smokeless tobacco samples through the mail.⁸

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7. *Id.* § 17537.3(c) (including, but not limited to, schools, clubhouses, and youth centers, when being used for their primary purposes).

8. *Id.* § 17537.3(d).

Business Associations and Professions; ticket sellers

Business and Professions Code §§ 22500, 22501, 22502, 22503, 22503.5, 22503.6, 22504, 22505, 22506, 22507, 22508, 22509, 22510, 22511 (new).

SB 675 (Montoya); 1986 STAT. Ch. 378

Sponsor: California Association of Ticket Agencies

Support: Assemblywoman LaFollette

Existing law prohibits any person from selling a ticket to an entertainment event if the ticket is sold at the event, without the property owner's permission, for a price in excess of the dollar value printed on the ticket.¹ Chapter 378 requires specified ticket sellers² to have a permanent business address from which only tickets may be sold, and that the address, as well as any service charge that will be imposed, must be included in the seller's advertisements.³ Any seller's tickets which are sold in conjunction with the sale of a tour or event package must also disclose in advertisements the price allotted for the tickets.⁴ In addition, Chapter 378 provides that the ticket seller must keep records of ticket sales, deposits, and refunds.⁵

1. CAL. PENAL CODE § 346. The sale of tickets to entertainment events on the property of a district agricultural association, for more than the price printed on the ticket, is also prohibited. CAL. FOOD & AGRIC. CODE § 4301.

2. Included are persons who sell admission tickets to sporting, musical, theater, or any other entertainment events, for compensation, commission, or otherwise. CAL. BUS. & PROF. CODE § 22503.

3. *Id.* §§ 22500, 22508.

4. *Id.* § 22509.

5. *Id.* § 22501. The ticket seller must be licensed as required by any local jurisdiction. *Id.* § 22500.

Prior to a sale, the ticket seller must show the purchaser, by description or by use of a map, the location of the seats.⁶

Chapter 378 requires ticket sellers to refund deposits when tickets to an event are unavailable.⁷ If an event is canceled, postponed, or rescheduled, the ticket price must be fully refunded to the purchaser upon request.⁸ Chapter 378 does not apply to primary contractors,⁹ or to persons authorized to sell tickets by a primary contractor.¹⁰ Agents of air carriers, ocean carriers, or motor coach carriers, who sell tickets in conjunction with tour packages,¹¹ persons selling six or less tickets to any event, or nonprofit charitable organizations selling tickets to an event sponsored by them are also exempt from the specifications of Chapter 378.¹² Any violation of Chapter 378 is a misdemeanor.¹³

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6. *Id.* § 22502.

7. *Id.* § 22506. A service charge not to exceed 10% may be retained by the ticket seller.
Id.

8. *Id.* § 22507. Any local jurisdiction may require a ticket seller to provide a bond of up to \$50,000 to provide for these refunds. *Id.*

9. *Id.* § 22503.5 (definition of primary contractor).

10. *Id.*

11. *Id.* § 22503.6 (applies when the package is accomplished through the primary event promoter).

12. *Id.* §§ 22503.6, 22504, 22511.

13. *Id.* § 22505.

Business Associations and Professions; veterinarians—citations and civil penalties

Business and Professions Code §§ 4875.2, 4875.4, 4875.6 (new).

SB 1244 (Stiern); 1986 STAT. CH. 240

Sponsor: Board of Examiners in Veterinarian Medicine

Existing law requires all persons practicing veterinary medicine¹ to

1. The practice of veterinary medicine includes the following: (1) representing that one is engaged in the practice of veterinary medicine; (2) diagnosing or prescribing a drug for the purpose of healing an animal; (3) administering a drug for the purpose of healing an animal, except if authorized by a licensed veterinarian; (4) performing a surgical or dental operation upon an animal; (5) determining the potency or pregnancy of livestock; and (6) using any words, letters, or titles to induce the belief that one is engaged in the practice of veterinary medicine. Such use constitutes prima facie evidence of the intention to represent oneself as a licensed veterinarian. CAL. BUS. & PROF. CODE § 4826. See also *id.* § 4827 (excepted practices).

be licensed² by the Board of Examiners in Veterinary Medicine (the Board).³ The Board has the authority to deny,⁴ revoke, or suspend⁵ a license, and to assess a fine when necessary.⁶ Chapter 240 empowers the Board to issue a civil citation⁷ to a veterinarian, or to an unlicensed person acting as a veterinarian, when there exists probable cause to believe that the person has violated a statute regarding the practice of veterinary medicine.⁸ The citation must describe the nature of the violation, with specific reference to the provision of law alleged to have been violated.⁹ In addition, the citation may contain an order of abatement¹⁰ and an assessment of a civil penalty.¹¹ In assessing the penalty, the Board must give due consideration to the circumstances surrounding the violation, and in no event shall the penalty exceed \$2,000.¹² Attempts at resolving the alleged violation must be made by the Board before the citation is served¹³ or any findings of fact or recommendations are made.¹⁴

If the party being charged intends to contest the citation or the penalty, Chapter 240 provides for an informal conference,¹⁵ at which the executive officer may affirm, modify, or dismiss the citation or penalty.¹⁶ If the violation is resolved by payment of a fine or by

2. *Id.* § 4848 (license requirements).

3. *Id.* § 4800 (Board of Examiners, in general). *See also id.* § 4804 (officers of the Board).

4. *See generally id.* § 4848(b). No license will be issued to anyone who has not demonstrated competency by examination.

5. *See id.* § 4883 (grounds for revocation or suspension of a license).

6. *Id.* §§ 4808 (issuance of licenses); 4875 (revocation, suspension, and authority to assess fines). Any person who violates a provision of law regarding the practice of veterinary medicine is guilty of a misdemeanor, and shall be fined or imprisoned upon conviction. *Id.* § 4831.

7. A civil citation is a writ issued out of court commanding the person named to appear on a specific day. The issuance of a citation avoids taking a suspect into immediate physical custody. *BLACK'S LAW DICTIONARY* 221 (5th ed. 1979).

8. *CAL. BUS. & PROF. CODE* § 4875.2.

9. *Id.*

10. The order must fix a reasonable time for abatement of the violation. *Id.*

11. *Id.*

12. *Id.* § 4875.4. The following factors must be given consideration when assessing a civil penalty: (1) the gravity of the violation; (2) the good faith of the person being charged; and (3) the history of previous violations. *Id.*

13. The citation may be served upon the veterinarian or unlicensed person personally or by any type of mailing requiring a return receipt. *Id.* § 4875.2.

14. *Id.*

15. The party being charged must request an informal conference with the Board within 10 days from receipt of the citation. *Id.* § 4875.6(a). An informal conference must be held within 60 days from receipt of the request. *Id.*

16. *Id.* The Board must state in writing the reasons for their decision regarding the conference, copies of which must be sent immediately to the party being charged and the person who submitted the complaint. *Id.* § 4875.6(a). The party being charged may, within five days of receiving the decision, administratively contest the decision of the Board. An uncontested decision is deemed a final order and is not subject to further administrative review. *Id.*

compliance with an order of abatement, the records relating to the civil citation must not be subject to public disclosure.¹⁷ Any fine received must be deposited in the Veterinary Medicine Contingent Fund.¹⁸

If the party being charged intends to administratively contest the decision reached at the informal conference, Chapter 240 provides for the arrangement of a hearing,¹⁹ at which the Board and an administrative law judge may affirm, modify, or vacate the citation or penalty.²⁰ If the party being charged disregards the decisions and findings of the Board, the Board may bring an action in the appropriate court requesting an order to compel compliance.²¹ However, an unlicensed person may, after giving notice to the Board, proceed directly to a judicial hearing without engaging in an informal conference or administrative hearing.²²

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17. *Id.* § 4875.6(b).

18. *Id.* § 4875.6(f). *Cf. id.* § 4903 (disposition of fines and forfeitures).

19. The hearing must be held before the Board and an administrative law judge. *Id.* § 4875.6(d). Chapter 240 provides the Board with all the adjudicative powers granted administrative agencies. *Id.* See CAL. GOV'T CODE § 11512 (procedural guidelines for administrative hearings).

20. CAL. BUS. & PROF. CODE § 4875.6(d). Failure of the party being charged to comply with any provision of the Board's decision may result in a suspension or denial of licensure. *Id.*

21. *Id.* § 4875.6(e). The complaint must include a copy of the Board's final order, along with factual findings and recommendations. *Id.* Absent contrary evidence, the findings of the Board constitute prima facie evidence of the facts stated therein. *Id.*

22. *Id.* § 4875.6(c).