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## Administrative Law

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# Administrative Law

## Administrative Law; Administrative Procedure Act

Government Code §§ 11346.6, 11349.2, 11349.7, 11349.8, 11349.9 (repealed); §§ 11340.15, 11344.3 (new); §§ 11017.6, 11342.1, 11343, 11343.5, 11344, 11344.1, 11344.2, 11344.4, 11344.6, 11344.7, 11346.1, 11346.2, 11346.4, 11346.5, 11346.53, 11346.55, 11346.7, 11346.8, 11347.3, 11347.5, 11349.1, 11349.3, 11349.4, 11349.5, 11349.6, 11350.3, 11351, 11356 (amended).  
AB 2540 (Leonard); 1987 STAT. Ch. 1375

Under existing law, the Office of Administrative Law (Office) must review all regulations adopted by state agencies<sup>1</sup> and disapprove those regulations that do not meet the requirements established by the legislature.<sup>2</sup> Existing law, however, does not require a state agency to certify and file a regulation with the Secretary of State if the agency finds that the regulation's adoption or repeal is an emergency.<sup>3</sup> Under Chapter 1375, if a certification is not submitted on an emergency repeal, the regulation that existed prior to the emergency becomes effective.<sup>4</sup>

Under existing law, a state agency must state specified information in the public notice of the adoption, amendment, or repeal.<sup>5</sup> Chapter

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1. CAL. GOV'T CODE § 11342(a) (definition of state agency).

2. *Id.* § 11349.1. Under existing law, the Office of Administrative Law (Office) must approve or disapprove of a regulation within 30 days. *Id.* § 11349.3(a). Under Chapter 1375, the Office must return a deficient rulemaking file to the submitting agency within three state working days after receipt of the file and notify and allow the adopting agency to correct any deficiency. *Id.* § 11349.1(f).

3. *Id.* § 11346.1. *See* *Schenley Affiliated Brands Corp. v. Kirby*, 21 Cal. App. 3d 177, 195, 98 Cal. Rptr. 609, 623 (1971) (what constitutes an emergency permitting a state agency to adopt emergency regulations with or without public notice and hearing is primarily a matter for agency discretion). *See also* *Trollers Marketing Ass'n, Inc. v. Fullerton*, 124 Cal. App. 3d 291, 302, 177 Cal. Rptr. 362, 368 (1981) (no hearing was required where an adequate declaration of emergency was made and time restraints required immediate action).

4. CAL. GOV'T CODE § 11346.1(f).

5. *Id.* § 11346.5. The notice of proposed adoption must include, for example, a statement of the time, place, and nature of the proceedings. *Id.* § 11346.5(a)(1). *See* CAL. ADMIN. CODE

1375 requires that the notice must also include a statement that no alternative would be more effective or less burdensome than the proposed action.<sup>6</sup> Existing law further specifies that if a public hearing is held on a regulation, the agency may continue or postpone the hearing.<sup>7</sup> Under Chapter 1375, however, the state agency must provide adequate notice to the public of the time when the hearing will be resumed or rescheduled if the hearing is continued or postponed.<sup>8</sup>

Existing law requires the Office to make a determination as to whether an agency guideline, criterion, bulletin, manual, instruction, order, standard of general application, or other rule is a regulation.<sup>9</sup> Furthermore, the Office must make specified disclosures regarding that determination.<sup>10</sup> Under Chapter 1375, any interested person may obtain a judicial review of a given determination by filing a written petition requesting that the determination made by the Office be modified or set aside.<sup>11</sup>

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tit. 1, § 120 (1986) (publication date and submission of notice for approval and publication). See also *id.* tit. 17, § 60002 (1986) (notice of State Air Resources Board meetings must be mailed to state and local government agencies having jurisdiction by law over the proposed activity).

6. CAL. GOV'T CODE § 11346.5(a)(7).

7. *Id.* § 11346.8(b)

8. *Id.*

9. *Id.* § 11347.5.

10. *Id.* The Office must file the determination with the Secretary of State, make the determination known to the agency, Governor, and Legislature, and publish a summary of the determination in the California Regulatory Notice Register within 15 days of the date of issuance. *Id.* § 11347.5(c).

11. *Id.* § 11347.5(d). The petition must be filed with the court within 30 days of the date the determination was published. *Id.*

## **Administrative Law; governmental agencies—disclosure of information**

Civil Code §§ 1798.3, 1798.24, 1798.25 (amended); Financial Code § 1909 (amended); Government Code §§ 6254.5, 7465, 7473, 7480, 11181 (amended).

SB 1024 (Vuich); 1987 STAT. Ch. 1453

Under existing law, the Information Practices Act restricts disclosure of personal and confidential information which is contained in

public records.<sup>1</sup> Furthermore, state agencies are prohibited from disclosing personal information in any manner that causes the information to be linked to the person.<sup>2</sup> Chapter 1453 permits the exchange of information between law enforcement and regulatory agencies if the information is needed for an investigation or for licensing and certification purposes.<sup>3</sup>

Existing law provides that confidential information becomes public when the information is released to the public, unless the information was obtained through legal proceedings such as discovery, under a limited disclosure statute, or was released contrary to law.<sup>4</sup> Chapter 1453 requires that information released to local, state and federal government agencies must be kept confidential and must not be disseminated to the public.<sup>5</sup>

Existing law provides that only specified agencies<sup>6</sup> engaged in the regulation and oversight of financial institutions may breach the confidential relationship between financial institutions and their customers.<sup>7</sup> Chapter 1453 adds the Department of Real Estate and the Department of Insurance to the list of agencies.<sup>8</sup>

Existing law allows department heads of regulatory agencies to issue administrative subpoenas for the production of witnesses and records.<sup>9</sup> Existing law permits evidence of unlawful activities obtained by means of these subpoenas to be forwarded to the Attorney General or the District Attorney.<sup>10</sup> Chapter 1453 permits evidence of unlawful activities obtained under administrative subpoenas to be forwarded to any appropriate federal or state agency.<sup>11</sup>

Existing law authorizes the Superintendent of Banks (Superintendent) to disclose information concerning the condition of a financial institution to federal authorities.<sup>12</sup> Chapter 1453 provides that this

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1. CAL. CIV. CODE § 1798.24.

2. *Id.* (exceptions are allowed in specified instances).

3. *Id.* § 1798.24(o).

4. CAL. GOV'T CODE § 6254.5.

5. *Id.* § 6254.5(e). For the purposes of section 6254.5 agency includes a member, agent, or employee of the agency acting within the scope of the agency membership, office, or employment. *Id.*

6. *Id.* § 7465(g). Agencies include the State Banking Department, the Department of Savings and Loan, the Department of Corporations, the State Controller, and the Administrator of Local Agency Security. *Id.*

7. *Id.* § 7480(b)-(h).

8. *Id.* § 7465.

9. *Id.* § 11181(e). The subpoenas for the production of witnesses and records must be related to the agency's regulatory responsibilities. *Id.* § 11180.5.

10. *Id.* § 11181(f).

11. *Id.*

12. CAL. FIN. CODE § 1909.

information be made available to any governmental agency that regulates financial institutions.<sup>13</sup> Chapter 1453 additionally allows the Superintendent to furnish information relating to a person who participates in a loan guarantee program to the governmental agency that administers the program.<sup>14</sup> Under Chapter 1453, the Superintendent may furnish a governmental agency that regulates business activities information relating to the following: (1) A suspected violation of a law administered by the agency; and (2) information relating to a person applying to the agency for a license, approval, or other authorization.<sup>15</sup> Finally, the Superintendent may furnish a law enforcement agency with information relating to a crime.<sup>16</sup>

*RM & RWL*

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13. *Id.* § 1909(a).
  14. *Id.* § 1909(b).
  15. *Id.* § 1909(c).
  16. *Id.* § 1909(d).