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Business Associations and Professions

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Business Associations and Professions

Business Associations and Professions; licensing of physicians and surgeons

Business and Professions Code §§ 2085, 2184 (amended).
SB 857 (Montoya); 1987 STAT. CH. 30
(Effective May 28, 1987)

Under existing law, to be a licensed physician or surgeon, an applicant who has graduated from a special medical school program¹ must complete at least two years of postgraduate clinical training,² and must achieve a passing score³ in each subject area⁴ of the required written examination.⁵ Prior law required that the two years of postgraduate clinical training include at least one year of clinical contact with patients, and also provided that passing scores were valid for four years from the date of examination unless this time period was extended for participation in an approved postgraduate training program.⁶ Chapter 30 provides that a passing score is valid for four years or until 1992, whichever is later.⁷ Furthermore, Chapter 30 allows the period of validity to be extended by the Division of Licensing for good cause and for time spent in a postgraduate training program.⁸

CH

1. CAL. BUS. & PROF. CODE § 2085(b)(1) (pertains to special medical school program offered by an approved medical school located in the United States or Canada).

2. *Id.* § 2085(b)(3) (approved by the Accreditation Council for Graduate Medical Education or the Coordinating Council of Medical Education of the Canadian Medical Association). See *id.* § 2084 (approval of schools).

3. *Id.* § 2184(a) (a passing score is one of 75%).

4. *Id.* § 2183 (subjects of physician's and surgeon's examinations).

5. See generally *id.* §§ 2170-2186 (examinations). *Id.* § 2085(b)(3).

6. 1985 Cal. Stat. ch. 1237, sec. 1, at ____ (amending CAL. BUS. & PROF. CODE § 2085); *id.* sec. 4, at ____ (amending CAL. BUS. & PROF. CODE § 2184).

7. CAL. BUS. & PROF. CODE § 2184(b). Chapter 30 specifies that the passing scores for Part I and II of the written examination are a standard score of 380 and 290, or higher, respectively. *Id.* § 2085(b)(3)(B).

8. *Id.* § 2184(b) A postgraduate training program includes, but is not limited to, residency training, fellowship training, remedial or refresher training, or other training that is intended to maintain or improve medical skills. *Id.*

**Business Associations and Professions; finance companies—
secondary market sales of real estate loans**

Financial Code §§ 18218.5, 22458.7, 22476, 24458.7, 24476, 26476 (amended).

AB 177 (Calderon); 1987 STAT. Ch. 37

Existing law permits a licensee¹ to sell promissory notes, which the licensee originated, to institutional investors.² Chapter 37 authorizes a licensee to sell promissory notes, purchased from and made by other licensees, to institutional investors.³ Further, Chapter 37 requires, unless otherwise agreed, that all funds received from the collection of payments be deposited and maintained in a trust account and be disbursed only in accordance with instructions of the owner of the promissory note.⁴

CH

1. Licensees in this context are: (1) Personal property brokers; (2) consumer finance lenders; and (3) commercial finance lenders. CAL. FIN. CODE §§ 22008, 24008, 26008. *See id.* § 22009 (persons includable in definition of personal property broker); *id.* § 24009 (definition of consumer finance lender); *id.* § 26009 (definition of commercial finance lender). *See also id.* §§ 22002, 24002 (definitions of broker).

2. *Id.* §§ 22476, 24476, 26476. *See id.* §§ 22476(b) (definition of institutional investor), 24476(b) (definition of institutional investor), 26476(b) (definition of institutional investor).

3. *Id.* §§ 22476(a), 24476(a), 26476(a).

4. *Id.* §§ 22476(c), 24476(c), 26476(c).

Business Associations; alcoholic beverages—licensing

Business and Professions Code §§ 23776, 25502 (amended).

AB 1712 (Areias); 1987 STAT. Ch. 68.

Existing law prohibits the issuance of a wholesaler's license¹ for the sale of alcohol² to an on-sale licensee³ in counties with a population of over 15,000 persons.⁴ Furthermore, existing "tied-house"

1. CAL. BUS. & PROF. CODE § 23378 (definition of wholesaler's license).

2. *Id.* §§ 23003 (definition of alcohol), 23004 (definition of alcoholic beverage).

3. *Id.* § 23396 (definition of on-sale license).

4. *Id.* § 23776. *See* CAL. GOV'T CODE § 28020 (population of counties).

restrictions⁵ prevent a manufacturer⁶ or wholesaler⁷ from holding ownership or interest in an off-sale general license.⁸ Existing law also permits the holding and transfer of both a beer and wine wholesaler's license⁹ and an off-sale general license¹⁰ in counties with a population of less than 15,000 persons if the licenses were held prior to September 19, 1947.¹¹

Chapter 62 provides that a wholesaler's license may not be issued to or renewed by an on-sale or off-sale licensee.¹² Chapter 62, however, allows the issuance of a wholesaler's license restricted to sales¹³ to an on-sale licensee in counties not exceeding a population of 15,000 persons.¹⁴ In addition, Chapter 62 extends the "tied-house" restrictions to any off-sale license.¹⁵ Finally, Chapter 62 prohibits the holders of both a beer and wine wholesaler's license and an off-sale general license from transferring the beer and wine license.¹⁶ Under Chapter 62, the transfer of the off-sale license must be from person-to-person.¹⁷

KAM

5. CAL. BUS. & PROF. CODE §§ 25500-25511 ("tied-house" restrictions).

6. *Id.* § 23356 (licensed manufacturer). Manufacturer also includes winegrower, manufacturer's agent, rectifier, distiller, bottler, importer. *Id.* § 25502.

7. *Id.* § 23027 (definition of wholesale). Wholesaler also includes any officer, director, or agent of a wholesaler. *Id.* § 25502.

8. *Id.* § 25502(a)-(d). *Id.* § 23394 (definition of off-sale general license).

9. *Id.* § 23379 (definition of beer and wine wholesaler's license).

10. *Id.* § 23394 (off-sale general license).

11. *Id.* § 25502. Where both licenses are simultaneously transferred, the transfer must be person-to-person. *Id.*

12. *Id.* § 23776.

13. *Id.* § 23025 (definition of sale).

14. *Id.* § 23776.

15. *Id.* § 25502(a)-(d).

16. *Id.* § 25502.

17. *Id.*

Business Associations and Professions; concurrent sale of beer, wine, and motor vehicle fuel

Business and Professions Code § 23790.5 (new).

AB 937 (Condit) 1987 STAT. CH. 176

Under existing law, the state has the exclusive right to regulate the

sale of alcoholic beverages.¹ With the enactment of Chapter 176, no city or county may prohibit the concurrent sale of motor vehicle fuel, wine, and beer.² Chapter 176, however, does not prevent a city or county from denying permission to engage in the concurrent retailing of fuel, beer, and wine through a conditional use ordinance containing specified provisions.³ In addition, Chapter 176 prohibits establishments engaged in the concurrent sale of motor vehicle fuel, beer, and wine from: (1) Selling wine or beer within five feet of the cash register, except in permanent coolers; (2) advertising alcoholic beverages at fuel islands; (3) selling alcoholic beverages from drive up windows; (4) displaying beer or wine in ice tubs; (5) advertising beer or wine through self-illuminated signs attached to buildings or windows; or (6) allowing employees under twenty-one to sell wine or beer between 10:00 p.m. and 2:00 a.m.⁴

Under existing law, any person furnishing a minor with alcohol is guilty of a misdemeanor.⁵ Chapter 176 requires that the license of any establishment⁶ which sells alcohol to a minor, be suspended for a minimum of seventy-two hours.⁷

DAH

1. CAL. CONST. art. XX, § 22. *See also* Ziffrin Inc. v. Reeves, 308 U.S. 132 (1939) (states are given broad power to regulate intoxicating liquor within their borders).

2. CAL. BUS. & PROF. CODE § 23790.5. No city or county may, after January 1, 1988, legislatively prohibit the concurrent retailing of beer or wine and motor vehicle fuel to be sold on separate sites. *Id.* § 23790.5(b)(1). On or after January 1, 1989, concurrent beer, wine, and motor vehicle fuel sales prohibitions legislatively adopted prior to May 5, 1987 have no legal effect. *Id.* § 23790.5(b)(2). On or after July 1, 1988, concurrent beer, wine, and motor vehicle fuel sale legislation adopted after May 5, 1987 has no legal effect. *Id.* § 23790.5(b)(3). Chapter 176, however, does not apply to counties prohibiting the combining of the sale of motor vehicle fuel with a broader class of products which includes alcoholic beverages or beer and wine, if the prohibition was adopted prior to August 1, 1985. *Id.* § 23789.5(b)(4). Chapter 176 does not apply to charter cities. *Id.* § 23790.5(f).

3. *Id.* § 23790.5(c) (conditional use permits must include the following: (1) A requirement for written findings, (2) a provision for an administrative appeal, (3) procedures for notice of hearings, and (4) a requirement that the findings be based on substantial evidence.

4. *Id.* § 23790.5.

5. *Id.* § 25658. *See also* Farah v. Alcoholic Beverage Control Appeals Bd., 154 Cal. App. 2d 326, 330, 316 P.2d 401, 404 (1957) (liquor license was subject to suspension for selling beer to a minor).

6. CAL. BUS. & PROF. CODE § 23790.5(e).

7. *Id.* The license suspension does not constitute a break in the continuous operation or substantial change in the mode or character of the operation. *Id.*

Business Associations and Professions; shareholder notification of votes

Corporations Code §§ 1509, 1510, 1511, 1512 (new).
SB 1194 (Robbins); 1987 STAT. Ch. 408

Existing law requires corporations¹ to hold an annual meeting of shareholders² for the election of directors.³ Chapter 408 requires a corporation to provide any requesting shareholder the result of a shareholder vote taken during a regular, annual or special meeting.⁴ The information provided by the corporation must include: (1) The number of shares voting for, against, abstaining, or withheld from the voting; (2) a tally of votes for each nominated director, if the matter voted upon was the election of directors; and (3) a breakdown by class if more than one class or series of shares voted.⁵ Chapter 408 applies to foreign corporations⁶ qualified⁷ to transact intrastate business in California if a shareholder resident⁸ requests the information.⁹

COMMENT

The application of Chapter 408 to foreign corporations may be unconstitutional under the commerce clause, which prohibits discrim-

1. CAL. CORP. CODE § 162 (definition of corporation).

2. *Id.* § 1512 (definition of shareholder).

3. *Id.* § 600(b); *see id.* § 301(a) (election of directors).

4. *Id.* § 600(b). The request must be made in writing and must be received within 60 days after the meeting. *Id.*

5. *Id.* § 1509.

6. *Id.* § 171 (definition of a foreign corporation).

7. A foreign corporation must obtain a certificate of qualification from the Secretary of State's office by filing a statement which includes the following: (1) Name, state or place of incorporation or where organized; (2) the address of the principal executive officer; (3) the address of the principal office in California, if any; (4) the name and location of the designated agent to receive service of process; (5) irrevocable consent to service of process; and (6) a statement as to whether the corporation is subject to the insurance code as an insurer. *Id.* § 2105.

8. A shareholder resident is: (1) A natural person residing in California; (2) a bank acting as a sole fiduciary or acting with one or more persons as a fiduciary; (3) a national bank having its head office in California; (4) any retirement fund for public employees established in California. *Id.* § 1510(b).

9. *Id.* § 1511. *See* CTS Corp. v. Dynamics Corp. of America, 481 U.S. ___, 109 S. Ct. ___, 95 L.Ed.2d 67, 84, (1987) (the commerce clause prohibits discrimination against interstate commerce, but a state is free to regulate corporations created by the laws of that state). *See* Pratt v. Robert S. Odell & Co., 49 Cal. App. 2d 550, 559, 122 P.2d 684, 688 (1942) (California has the power to reasonably regulate foreign corporations doing business in the state).

ination against interstate trade.¹⁰ However, the California Supreme Court held in *Pratt v. Robert S. Odell & Co.*¹¹ that the state has the power to reasonably regulate foreign corporations doing business in the state.¹²

Since all corporations, both intrastate and interstate, are affected in a similar manner Chapter 408 is not discriminatory on its face.¹³ To determine if Chapter 408 is discriminatory as applied the incidental burden imposed on interstate commerce by Chapter 408 must be clearly excessive in relation to the putative local benefits.¹⁴ Only if the burden on interstate commerce clearly outweighs California's legitimate purposes, does such a regulation violate the commerce clause.¹⁵

At least one portion of another California statute,¹⁶ which allows the limited regulation of foreign corporations, has survived constitutional challenge on both the commerce clause and due process issues in state court action.¹⁷ *Wilson v. Louisiana-Pacific Resources, Inc.* held that a cumulative voting requirement imposed by the statute was valid since California residents had a valid interest in the cumulative voting and the requirement did not conflict with the laws of the state of incorporation.¹⁸

JD

10. See U.S. CONST. art. I, § 8, cl. 8. See also *Gibbons v. Ogden*, 22 U.S. 1, 195 (1824) (interpreting the power of Congress to prescribe the laws regarding interstate commerce).

11. 49 Cal. App. 2d 550, 122 P.2d 684 (1942).

12. *Id.* at 559, 122 P.2d at 688.

13. Chapter 408 does not block the flow of commerce at California's borders and therefore is not facially discriminatory and invalid per se. See *City of Philadelphia v. New Jersey*, 437 U.S. 617, 624 (1978). See *Minnesota v. Clover Leaf Creamery Co.*, 449 U.S. 456, 471-72 (1981).

14. *Pike v. Bruce Church, Inc.*, 397 U.S. 137, 142 (1970).

15. *Exxon Corp. v. Governor of Maryland*, 437 U.S. 117, 126 (1978) (holding that in order to strike down a regulation as not discriminatory the regulation must have a demonstrable effect on the interstate flow of goods).

16. CAL. CORP. CODE § 2115.

17. *Wilson v. Louisiana-Pacific Resources, Inc.*, 138 Cal. App. 3d 216, 225, 187 Cal. Rptr. 852, 858 (1982).

18. 138 Cal. App. 3d 216, 225, 187 Cal. Rptr. 852, 858-59 (1982).

Business Associations and Professions; immigration consultants

Business and Professions Code § 22446.5 (new); §§ 22441, 22442 (amended).

AB 1729 (Isenberg); 1987 STAT. Ch. 484

(Effective September 9, 1987)

Under prior law, an immigration consultant could give advice on an immigration matter,¹ including the drafting of an application, brief, document, petition or other paper, and the completing of a form provided by a federal or state agency.² Chapter 484 narrows existing law by providing that an immigration consultant³ may give only nonlegal assistance or advice on an immigration matter.⁴ An immigration consultant who violates Chapter 484 is guilty of a misdemeanor.⁵ Furthermore, a person aggrieved by a violation of a provision relating to immigration consultants may bring an action for injunctive relief or damages.⁶ Chapter 484 also allows any other party to seek injunctive relief in the name of the general public for a violation of Chapter 484.⁷ Finally, the purpose of Chapter 484 is to complement existing law with the final implementation of the Immigration Reform and Control Act of 1986.⁸

RWL

1. CAL. BUS. & PROF. CODE § 22441(b) (definition of immigration matter).

2. 1986 Cal. Stat. ch. 248, sec. 11, at ____ (enacting CAL. BUS. & PROF. CODE § 22441(a)).

3. See CAL. BUS. & PROF. CODE §§ 22440-22446.5 (provisions regarding immigration consultants).

4. *Id.* § 22441(a). The assistance or advice includes, but is not limited to, the following: (1) Completing a form provided by a federal or state agency but not advising a person as to that person's answers on those forms; (2) translating a person's answers to questions posed in those forms; (3) securing supporting documents, such as birth certificates, that may be necessary to complete those forms; (4) submitting completed forms on a person's behalf and at their request to the Immigration and Naturalization Service; and (5) making referrals to persons who could undertake legal representation activities for a person in an immigration matter. *Id.*

5. *Id.* § 22441(d). The misdemeanor is punishable by a fine of not less than \$500 or more than \$2000, or imprisonment up to one year, or both. *Id.* § 22445.

6. *Id.* § 22446.5(a). Upon a finding of a violation, the court, must award in addition to actual damages, treble the amount of actual damages or \$300 per violation, whichever is greater. *Id.* The court must also grant a prevailing plaintiff reasonable attorney's fees and costs. *Id.*

7. *Id.* § 22446.5(b). The court must award attorney's fees if the party prevails. *Id.* Any action brought for a violation of the immigration consultant provisions must be set for trial at the earliest possible date. *Id.* § 22446.5(c). Those trials take precedence over all other cases except older matters of the same character and matters to which special preference may be given by law. *Id.* See 1987 Cal. Stat. ch. 484, sec. 4, at ____ (the finding of one provision of Chapter 484 as invalid does not invalidate the remaining provisions).

8. 1987 Cal. Stat. ch. 484, sec. 5, at ____ See Immigration Reform and Control Act, Pub. L. No. 99-603, 100 Stat. 3359 (1986) (providing for implementation of new federal immigration law).

Business Associations and Professions; public works contracts—specialty contractors

Business and Professions Code § 7059 (amended).
AB 1741 (Bradley); 1987 STAT. Ch. 485

Existing law permits a specialty contractor¹ to subcontract² two or more trades if those trades are incidental or supplemental to the work to be done by the specialty contractor.³ Chapter 485 provides that in a public works⁴ contract, the specialty contractor must be classified⁵ in a majority of the project in order to perform the project.⁶ In addition, Chapter 485 requires all work outside the trade classification of the specialty contractor to be subcontracted to a licensed⁷ subcontractor.⁸

CC

1. CAL. BUS. & PROF. CODE § 7058 (definition of specialty contractor). *See* CAL. PUB. CONT. CODE § 4100 (regulations imposed by the Subletting and Subcontracting Fair Practices Act).

2. CAL. GOV'T CODE § 4113 (definition of subcontractor).

3. CAL. BUS. & PROF. CODE § 7059(a).

4. CAL. PUB. CONT. CODE § 1101 (definition of public works).

5. CAL. BUS. & PROF. CODE § 7059 (rules and procedure for classification).

6. *Id.* § 7059(b).

7. *Id.* § 125.6 (definition of license).

8. *Id.* § 7059(b).

Business Associations and Professions; management companies—shareholders' meetings

Corporations Code § 600 (amended).
AB 1652 (Sher); 1987 STAT. Ch. 532

Under existing law, corporations are required to hold annual shareholders' meetings for the election of directors at a time and place set in accordance with the corporate bylaws.¹ In addition, existing law provides that a shareholders' meeting may be called at any time by the board, the chairman of the board, or shareholders

1. CAL. CORP. CODE § 600(b). If no other place is stated or so fixed, shareholder meetings must be held at the principal executive office of the corporation. *Id.* § 600(a).

entitled to cast ten percent of the votes at the meeting.² Under Chapter 532, an exemption from these requirements is provided for regulated management companies.³ The exempted corporations must hold meetings, however, as required by the Federal Investment Company Act of 1940.⁴

RM & RWL

2. *Id.* § 600(d).

3. CAL. CORP. CODE § 600(b). *See* CAL. REV. & TAX. CODE § 23701m (definition of diversified or nondiversified management companies).

4. CAL. CORP. CODE § 600(b). *See* 15 U.S.C. § 80a(16) (Federal Investment Company Act of 1940). No person may serve as a director of a registered investment company unless elected by the holders of the outstanding voting securities at an annual or a special meeting. *Id.* Vacancies occurring between the meetings may be filled, however, if immediately after filling the vacancy at least two-thirds of the directors then holding office have been elected to the office by the holders of the outstanding voting securities of the company at the meeting. *Id.*

Business Associations and Professions; corporate reorganizations

Corporations Code § 181 (amended); § 1203 (new).
SB 1464 (Keene); 1987 STAT. CH. 627

Under existing law, an exchange reorganization means one corporation acquires the shares of another corporation in exchange¹ for the equity securities² of the acquiring corporation.³ Prior law required the acquiring corporation, immediately after the acquisition, to control the acquired corporation.⁴ Chapter 627, however, eliminates the requirement that the acquiring corporation control the other to qualify as an exchange reorganization.⁵

1. *See* CAL. CORP. CODE § 181(b) (whole or partial exchange).

2. *See id.* (or the equity securities of a corporation that is in control of the acquiring corporation).

3. *Id.* A reorganization may also be a bankruptcy merger or an acquisition in exchange for specified debt securities. *Id.* §§ 181(a), (c). *See* CAL. FIN. CODE § 4848 (approval of agreements of sale, approval of sales to a state depository corporation). *See also* Small, *Corporate Combinations under the New California General Corporations Law*, 23 UCLA L. REV. 1190, 1194 (1976) (certain sales of assets for cash or for a form of consideration which was thought not to subject the recipient to the risk of long-term investment in the acquiring corporation are not treated as "reorganizations").

4. 1976 Cal. Stat. ch. 641, sec. 4.6, at 1514 (enacting CAL. CORP. CODE § 181(b)).

5. CAL. CORP. CODE § 181(b).

Chapter 627, however, adds the requirement that a reorganization proposal⁶ made to a corporation⁷ by a party who controls that corporation⁸ must be accompanied by a report attesting that the proposal's value is reasonable.⁹ Any other similar proposal¹⁰ made by another party while the initial proposal is pending must be given to the target corporation's shareholders.¹¹ Chapter 627 also describes voting procedures for the targeted corporation's shareholders.¹²

GWH

6. *See id.* § 1203(a) (or a proposal for a short-form merger). *See id.* §§ 181(a) (except for short-form mergers, all mergers pursuant to California Corporations Code sections 1100-1112 are reorganizations), 187 (definition of short-form mergers).

7. *Id.* § 1203(a) (or to some or all of that corporation's shareholders).

8. *See id.* (those who either directly or indirectly control or manage or direct that corporation).

9. *Id.* (the report must be made by an independent appraiser). The proposal's reasonableness is determined as to the target corporation's shareholders. *Id.* *See* Buxbaum, *The Dissenter's Appraisal Remedy*, 23 UCLA L. REV. 1229, 1229 (1976) (current appraisal procedures in the area of reorganization transactions and appraisal procedures are deficient).

10. *See* CAL. CORP. CODE § 1203(b) (for reorganization or short-form merger).

11. *Id.* (given by the corporation's directors). Any documents provided by the proposer must also be given to the shareholders. *Id.*

12. *Id.* (if a vote is required by California Corporations Code section 1201 regarding an offer made by a party who does not control, manage or direct the corporation, the corporation's directors must arrange for the vote). A reorganization proposal made by any party who controls, manages, or directs the corporation may not be effected or closed until after a vote on a later offer is taken. *Id.* The shareholders must have a reasonable opportunity to respond to the later offer before the original offer is effected or closed. *Id.* The controlling party's offer may be amended in consideration of the later offer. *Id.* *See id.* §§ 1201(e) (with respect to approval of receipt of shares in a non-close corporation in exchange for shares in a close corporation, such reorganizations must be approved by at least two-thirds of each class of the outstanding shares in a close corporation, unless the articles provide for a lesser vote but not less than a majority of each class), 1111 (a two-thirds vote is also required by the shareholders of a close corporation which is not the surviving corporation in a merger with a nonclose corporation).

Business Associations and Professions; settlement and co-obligors

Civil Code §§ 1432, 1543 (amended); Code of Civil Procedure §§ 877, 877.6 (amended).

SB 1395 (Kopp); 1987 STAT. CH. 677

Existing law provides that a settlement of a tort claim with one or more alleged tortfeasors does not discharge the liability of other

parties.¹ A settlement, however, does reduce the amount of the claim against the remaining parties by the amount stipulated in the settlement.² Chapter 677 extends these provisions to co-obligors³ mutually subject to contribution rights.⁴ Existing law bars joint tortfeasors from claims for equitable comparative contribution or indemnity against a tortfeasor who has settled in good faith.⁵ Chapter 677 bars co-obligors from claims for equitable comparative contribution or indemnity against a co-obligor who has settled in good faith.⁶

WSY

1. CAL. CIV. PROC. CODE § 877(a). Party with whom the settlement is made is discharged. *Id.* § 877(b).

2. *Id.* § 877(a). *See, e.g.,* Syverson v. Heitman, 171 Cal. App. 3d 106, 110, 214 Cal. Rptr. 581, 584 (1985) (reduction of award by amount of plaintiff's pre-trial settlement with co-tortfeasor).

3. *See* CAL. CIV. CODE § 1431 (obligation imposed upon several persons is presumed to be joint).

4. CAL. CIV. PROC. CODE § 877. This section is not applicable when there is an express apportionment of liability in writing between the co-obligors. *Id.* § 877(c). Furthermore, this section is not applicable to a release, a dismissal, or a covenant given to a co-obligor on a contract debt when the contract was made before January 1, 1988. *Id.* § 877(d).

5. *Id.* § 877.6(c). *See, e.g.,* Singer Co. v. Superior Court, 179 Cal. App. 3d 875, 889-90, 225 Cal. Rptr. 159, 167-68 (1986) (good faith settlement bars further claims against settling tortfeasor).

6. CAL. CIV. PROC. CODE § 877.6(c).

Business Associations and Professions; foreign national and regional bank holding companies

Financial Code § 3775.5 (new); §§ 3755, 3775 (amended).
SB 1244 (Robbins); 1987 STAT. Ch. 684
(*Effective September 17, 1987*)

Under the California Interstate (National) Banking Act of 1986¹ and the California Interstate (Regional) Banking Act of 1986,² a

1. CAL. FIN. CODE §§ 3750-3761 (becomes operative January 1, 1991).

2. *Id.* §§ 3770-3781 (became effective July 1, 1987, and will be repealed on January 1, 1991). *See generally* *Review of Selected 1986 California Legislation*, 18 PAC. L.J. 433, 483 (1987) (discussing the Robbins-Vuich-Calderon Financial Institutions Act of 1986, which embodies the Interstate (National) Banking Act of 1986 and the Interstate (Regional) Banking Act of 1986).

foreign bank holding company,³ with specified exceptions,⁴ may not acquire, merge, or consolidate with a California bank⁵ or bank holding company (California bank).⁶ These Acts, however, permit a non-United States bank or bank holding company (non-United States bank)⁷ to acquire, merge with, or consolidate with, a California bank.⁸ Chapter 684 provides that, under both Acts, a non-United States bank is not prohibited from acquiring the assets of a California bank.⁹ Chapter 684 further clarifies that the provisions of both Acts do not prohibit¹⁰ the acquisition of,¹¹ merger with, or consolidation with, a California bank if the non-United States bank meets any of the following criteria: (1) The non-United States bank controls¹² no bank or branch within the United States; (2) within the United States the non-United States bank controls only banks or branches within California; (3) the non-United States bank has established the bank's home state, in accordance with the International Banking Act of 1978,¹³ in California or a state that has substantial reciprocity¹⁴ with California; or (4) the non-United States bank acquires the California bank by merger, consolidation, or acquisition of assets, through the non-United States bank's California bank subsidiary,¹⁵ and that sub-

3. CAL. FIN. CODE §§ 3751(g), 3771(g) (definitions of foreign bank holding company); 3751(a), 3771(a) (definitions of bank holding company).

4. *Id.* §§ 3753, 3773 (list of exceptions to requirements of California Financial Code sections 3754 and 3774). A foreign bank holding company, with the prior approval of the State Superintendent of Banks, may do any of the following: (1) Cause or permit an existing California bank or bank holding company to become a subsidiary of the foreign bank holding company, (2) acquire directly or indirectly assets of any California bank or bank holding company in an amount otherwise prohibited by California Financial Code sections 3754 or 3774, or (3) merge or consolidate with any California bank or bank holding company. *Id.*

5. CAL. FIN. CODE §§ 3751(c), 3771(c) (definitions of California bank). *See id.* §§ 3751(b), 3771(b) (definitions of bank).

6. *Id.* §§ 3754, 3774. *See id.* §§ 3751(d), 3771(d) (definitions of California bank holding company).

7. *Compare* 1986 Stat. ch. 1057, sec. 2, at —(enacting CAL. FIN. CODE § 3755) and 1986 Stat. ch. 1250, sec. 2, at —(enacting CAL. FIN. CODE § 3775) (non-United States bank or bank holding company was described as a bank that maintained no branch, or a bank holding company that did not control any bank that maintained a branch, within the United States but outside California if the bank or bank holding company was not controlled by a company having the bank's head office located within the United States) with CAL. FIN. CODE §§ 3755 and 3775 (new description of non-United States bank or bank holding company).

8. CAL. FIN. CODE §§ 3755, 3775.

9. *Id.* §§ 3755, 3775.

10. *Id.* §§ 3755, 3775 (to the extent otherwise authorized by the laws of this State and of the United States). *See id.* §§ 3754, 3774 (prohibition provisions).

11. *Id.* §§ 3755, 3775 (or acquisition of the assets).

12. *See id.* §§ 3751(f), 3771(f) (definitions of control).

13. 12 U.S.C. § 3103(c) (Supp. 1981).

14. CAL. FIN. CODE §§ 3751(j), 3771(j) (definitions of substantial reciprocity).

15. *Id.* §§ 3751(i), 3771(d) (definitions of subsidiary).

sidiary was established and operated as authorized by the International Banking Act of 1978.¹⁶ Furthermore, Chapter 684 adds that nothing in the California Interstate (Regional) Banking Act of 1986 prohibits any company from acquiring all or part of a credit card portfolio from a California bank.¹⁷

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16. *Id.* §§ 3755, 3775. *See* 12 U.S.C. § 3103(b) (Supp. 1981) (subsidiary authorization provisions).

17. *Id.* § 3775.5. *See* 1987 Cal. Stat. ch. 684, sec. 4, at _____. Chapter 684 was enacted to clarify ambiguities of California Financial Code section 3775 regarding the ability of foreign banks and bank holding companies to acquire a majority of the assets of a California bank or bank holding company. *Id.* *See also* 1987 Cal. Stat. ch. 63, sec. 2, at _____ (amending CAL. FIN. CODE § 3775) (permits the acquisition of a credit card portfolio by a non-United States bank or bank holding company). Chapter 63 was enacted to permit the consummation of significant banking transactions then underway which were called into doubt by California Financial Code section 3775. *Id.* *See generally* March 12, 1987, *Interpretive Opinion—California Interstate (Regional Banking Act of 1986)*, James F. Carrig, Chief Counsel for the State Superintendent of Banks, (copy on file at *Pacific Law Journal*) (analyzing the problem faced by banks in four separate fact situations attempting to acquire assets of California banks).

Business Associations and Professions; telephone sales

Business and Professions Code § 17511.1, 17511.3, 17511.4 (amended).

AB 1409 (Frazee); 1987 STAT. CH. 708

Existing law provides that a telephonic seller¹ must register with the Department of Justice before doing business in California.² Chapter 708 expands existing law to require persons³ who offer for sale coins and any other investment opportunities to register.⁴

Existing law exempts the following from the definition of a telephonic seller: (1) Those persons who solicit for the sale of securities

1. Existing law defines a telephonic seller as any person who over the telephone offers to sell a prospective purchaser the following: (1) Gold, silver, or other metals; (2) diamonds, rubies, sapphires, or other stones; (3) coal or other minerals; (4) any interest in oil, gas, or mineral fields, or (5) wells or exploration sites. CAL. BUS. & PROF. CODE § 17511.1(a)(6). *See id.* § 17511.2(f) (definition of prospective purchaser).

2. *Id.* § 17511.3(a).

3. *Id.* § 17511.2(d) (definition of person).

4. *Id.* § 17511.1(a)(6).

qualified or exempt under the Corporate Securities Law of 1968;⁵ (2) those persons who solicit for sales of franchises registered with the Department of Corporations;⁶ and (3) those persons whose phone solicitation is to be followed by a closing of the sale at a face-to-face meeting.⁷ Chapter 708 revises the exemptions for qualified securities to also include qualified securities in issuer transactions,⁸ recapitalizations and reorganizations,⁹ and nonissuer transactions.¹⁰ Furthermore, under Chapter 708, only those persons who solicit with the intent to complete and who do complete the sales presentation at a later face-to-face meeting qualify for the exemption.¹¹ Chapter 708 also creates new exemptions for the following: (1) Persons soliciting a transaction regulated by the Commodity Futures Trading Commission¹² who are validly registered or temporarily licensed with the Commodities Futures Trading Commission;¹³ (2) persons who sell coins or bullion at a price that is no more than twenty-five percent more than the price at which the seller is currently buying the coins or bullion and who otherwise qualifies;¹⁴ and (3) persons who are licensed to receive money for the purpose of transmitting the money to foreign countries.¹⁵ Finally, under Chapter 708, the burden of proving an exception or exemption in a civil proceeding and the burden of producing evidence to support a defense based on an exception or exemption in a criminal proceeding is on the person claiming the exception or exemption.¹⁶

Under existing law, a seller must file an addendum to the seller's annual registration form to provide information on changes in sales-

5. See CAL. CORP. CODE §§ 25100-25106 (exemptions from qualification of the sale of securities).

6. See *id.* §§ 31110-31124 (registration of franchises).

7. CAL. BUS. & PROF. CODE § 17511.1(c).

8. See CAL. CORP. CODE § 25110 (qualification of issuer transactions).

9. See *id.* § 25120 (qualification of recapitalizations and reorganizations).

10. CAL. BUS. & PROF. CODE § 17511.1(c)(1). See CAL. CORP. CODE § 25130 (qualification of nonissuer transactions).

11. CAL. BUS. & PROF. CODE § 17511.1(c)(9).

12. See 7 U.S.C. §§ 1-26 (transactions regulated by the Commodity Futures Trading Commission).

13. CAL. BUS. & PROF. CODE § 17511.1(c)(18).

14. *Id.* § 17511.1(c)(19). The seller must have had a retail location in California from which bullion or coins have been sold for at least three years. *Id.* The telephonic solicitations must not have been the person's primary business and telephone sales must have made up less than twenty percent of total retail sales. *Id.* The person claiming the exemption must comply with registration requirements and file a form providing specified information with the Attorney General. *Id.* See *id.* §§ 17511.3 (registration requirements); 17511.4(p) (filing of form with Attorney General).

15. *Id.* § 17511.1(c)(20). See CAL. FIN. CODE §§ 1800-1813 (transmission of money abroad).

16. CAL. BUS. & PROF. CODE § 17511.1(d).

persons soliciting on behalf of the seller.¹⁷ Chapter 708 requires the addendum to include the required information on all salespersons who are currently soliciting, or have solicited on behalf of the seller at any time during the period between the filing of the registration, or last addendum, and the current addendum.¹⁸ Under existing law, the seller must post the confirmation of receipt of filing at each business location of the seller.¹⁹ Chapter 708 requires the seller to have a copy of the entire registration available for inspection by any governmental agency at each business location.²⁰ In addition, the seller must post, in close proximity to the confirmation of receipt of filing, the name of the individuals in charge of each business location.²¹

Under existing law, each filing of a registration form must contain specific information that includes: (1) A copy of all sales scripts the telephonic seller requires salespersons to use when soliciting prospective purchasers, or a statement that no sales scripts are required, and (2) the principal residence address, driver's license number and state of issuance for each person connected with the seller's business activities.²² Chapter 708 requires additional information to be disclosed, including: (1) A description of the items offered for sale,²³ and (2) the birth date of each person connected with the seller's business activity.²⁴ In addition, if a person claims the exemption for coins or bullion, the person must file a verified form provided by the Attorney General setting forth information which includes the following: (1) The name of the person claiming the exemption, (2) the complete street address of the person's retail location, (3) a copy of the person's currently valid business license, and (4) a statement reflecting the dollar amount of the person's sales made by telephone during the twelve months prior to filing.²⁵

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17. *Id.* § 17511.3(c).

18. *Id.*

19. *Id.* § 17511.3(d).

20. *Id.*

21. *Id.*

22. *Id.* § 17511.4.

23. *Id.* § 17511.4(j).

24. *Id.* § 17511.4(f).

25. *Id.* § 17511.4(p).

Business Associations and Professions; banks—dividends, removal of employees

Financial Code § 1913.5 (new); § 643 (amended).
AB 1672 (Johnston); 1987 STAT. CH. 714

Prior law authorized a bank¹ to distribute to shareholders² an amount in dividends not exceeding the net income of the bank for the last fiscal year.³ Under Chapter 714, a bank⁴ may distribute to shareholders an amount of money which does not exceed the greatest of: (1) The retained earnings of the bank, (2) the net income for the current fiscal year, or (3) the net income for the last fiscal year.⁵

Existing law authorizes the Superintendent of Banks⁶ (Superintendent) to enforce compliance with state laws and the bank's articles of incorporation⁷ by issuing orders.⁸ Existing case law imposes liability upon officers and employees of a bank for violations of their fiduciary duty.⁹ Chapter 714 creates new provisions which empower the Superintendent to issue orders¹⁰ suspending or removing a director, officer or employee of a bank¹¹ or prohibiting the person from participation in bank activities for violation of Chapter 714.¹² To issue these orders, the Superintendent must make specified findings,¹³

1. See CAL. FIN. CODE § 102 (definition of bank).

2. See *id.* § 146 (definition of shareholder); CAL. CORP. CODE § 185 (definition of shareholder).

3. 1978 Cal. Stat. ch. 965, sec. 65, at 2980 (enacting CAL. FIN. CODE § 643).

4. CAL. FIN. CODE § 643 (also applicable to a majority-owned subsidiary of a bank). See *id.* § 140 (definition of majority-owned subsidiary); CAL. CORP. CODE § 189(a).

5. CAL. FIN. CODE § 643 (prior approval of the superintendent is required).

6. See *id.* § 112 (definition of superintendent).

7. See CAL. CORP. CODE § 300 (articles of incorporation). See generally CAL. FIN. CODE § 400 (filing of articles of incorporation).

8. CAL. FIN. CODE § 1912 (applicable to banks and financial institutions including trust companies and foreign banking corporations).

9. Bank of America Nat'l Trust & Sav. Ass'n v. Ryan, 207 Cal. App. 2d 698, 709, 24 Cal. Rptr. 739, 751 (1962).

10. See CAL. FIN. CODE § 1913.5(a)(3) (definition of order).

11. See *id.* § 1913.5(a)(2) (definition of bank).

12. *Id.* § 1913.5(b)-(e).

13. The Superintendent must find that (1) the subject person has committed violations, or has engaged in unsafe or unsound acts with respect to the business of the bank, or breached a fiduciary duty; (2) that the bank has suffered or will suffer substantial financial loss or damage because of the breach, or has received financial gain by reason of such violation; and (3) the violation is one involving personal dishonesty or demonstrating a willful or continuing disregard for the safety or soundness of the bank. *Id.* § 1913.5(b). See *id.* § 1913.5(a)(4) (subject person includes any director, officer or employee of the bank or any person who participates in the conduct of the business of the bank). The Superintendent may also issue an order if: (1) The subject person's conduct with respect to another bank or business has resulted in substantial financial loss or other damage, (2) the conduct evidenced personal

give notice, and provide a hearing.¹⁴ Chapter 714 enumerates the circumstances in which the Superintendent may immediately issue an order suspending or removing a director, officer, or employee from office and prohibiting the person from further participation in bank activities.¹⁵ A person to whom an order is issued, may file an application for a hearing with the Superintendent within thirty days after the order is issued, or may apply to the Superintendent for a modification or rescission of the order.¹⁶ The Superintendent must affirm, modify, or rescind the order within thirty days after the hearing.¹⁷ Chapter 714 further recognizes that a person's right to petition for judicial review of an order is not affected by the person's failure to apply to the Superintendent for a hearing, or to apply for a modification or rescission of the order.¹⁸

Finally, Chapter 714 makes it unlawful for a subject person to whom an order is issued to: (1) Serve as a director, officer, employee, or agent of any bank; (2) vote¹⁹ any shares²⁰ for the election of bank directors; (3) solicit, procure, transfer, or vote any proxy, consent, or authorization with respect to any shares of any bank having voting rights; or (4) participate in conducting the business of any bank.²¹ A violation²² of this provision is punishable by a maximum fine of five

dishonesty or willful and continuing disregard for the safety and soundness of the other bank or business, and (3) the conduct demonstrates the unfitness of the person to continue as a subject person of the bank. *Id.* § 1913.5(c).

14. *Id.* See *id.* § 1913.5(h) (provisions governing the giving of notice and a hearing).

15. *Id.* § 1913.5(c)-(e). The Superintendent may immediately issue an order if: (1) The order is necessary for the protection of the bank, and (2) other specified factors are true with respect to the subject person. *Id.* § 1913.5(d). An order may also immediately be issued if the Superintendent finds the following: (1) The subject person has been charged in an indictment issued by a grand jury, or in other specified pleadings, with a crime punishable by a term exceeding one year which involves dishonesty or breach of trust; and (2) the person's further service as an officer, director, or employee of the bank may pose a material threat to the interests of the bank account holders, or may materially impair public confidence in the bank. *Id.* § 1913.5(e)(1). The Superintendent may immediately issue an order suspending or removing an officer, director or employee of a bank if the Superintendent finds that the person has been finally convicted of a crime punishable by imprisonment for a term exceeding one year involving dishonesty or breach of trust, and the person's continuing service to the bank would pose a material threat to the interests of the bank's account holders, or may threaten to impair public confidence in the bank. *Id.* § 1913.5(e)(2).

16. *Id.* § 1913.5(f)(1), (g)(1).

17. *Id.* § 1913.5(f)(1) (otherwise the order will be deemed rescinded).

18. *Id.* § 1913.5(f)(2), (g)(2).

19. *Id.* § 150 (definition of vote).

20. *Id.* § 145 (definition of shares).

21. *Id.* § 1913.5(i)(1). See *id.* § 119 (voting of shares).

22. *Id.* § 1913.5(a)(5) (definition of violation).

thousand dollars, imprisonment in the state prison or county jail not exceeding one year, or by both.²³

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23. *Id.* § 1913.5(i)(2). Chapter 714 also authorizes the Superintendent to order a person to pay a civil penalty if the person is found guilty of a violation.

Id. § 1913.5(i)(3). The Superintendent must consider several factors when determining the amount of the civil penalty, but may not impose a penalty exceeding \$1000 for each violation, or \$1000 for each day for which the violation continues. *Id.*

Business Associations and Professions; deposits to credit unions

Business and Professions Code § 7737.7 (new); §§ 10145, 17538.3 (amended); Civil Code § 1916.2 (new); § 1717.5 (amended); Government Code § 7490 (amended).

AB 1770 (Lancaster); 1987 Cal. STAT. Ch. 764

Under existing law, the executor or administrator of an estate may deposit estate funds in a bank and invest in a savings and loan association.¹ A real estate broker may deposit trust funds in a bank or savings and loan association.² Existing law also authorizes a bank and a savings and loan association to serve as a depository³ for the corpus of a trust⁴ for a preneed funeral contract.⁵ With the enactment

1. CAL. PROB. CODE § 585.

2. CAL. BUS. & PROF. CODE § 10145(d); CAL. ADMIN. CODE tit. 10, § 2830 (1985). The broker may only make the deposit at the request of the owner of the trust funds or the principals to the transaction or transactions through which the broker received the funds. CAL. BUS. & PROF. CODE § 10145(d). All of the following conditions must also be met: (1) The account must be in the broker's name as trustee; (2) all the funds in the account must be covered by a federal insurance agency; (3) the funds in the account must be kept separate and distinct; (4) the broker must disclose to the person providing the funds and any known beneficiaries the nature of the account; (5) interest on the account must not inure to the benefit of the broker; and (6) in an executory sale, lease, or transaction the parties to the contract have specified the recipient of interest on the account. *Id.* § 10145(d)(1)-(6). See also CAL. ADMIN. CODE tit. 10, §§ 2830-2835 (1986) (regulations concerning the handling of trust fund accounts by real estate brokers). See generally *Review of Selected 1984 California Legislation*, 16 PAC. L.J. 461, 711 (1985) (reviewing the regulations governing the deposit of trust funds by a real estate broker).

3. CAL. FIN. CODE § 866(a)(4) (credit unions are depository institutions).

4. CAL. BUS. & PROF. CODE § 7736 (definition of corpus of a trust).

5. *Id.* § 7737.5 (savings and loan association), CAL. ADMIN. CODE tit. 16, § 1263(a)(3) (1986) (banks). See CAL. BUS. & PROF. CODE § 7735 (definition of preneed funeral contract).

of Chapter 764, the executor or administrator of an estate may deposit estate funds in a credit union.⁶ In addition, a real estate broker may deposit trust funds in a credit union, and federally insured⁷ credit unions may act as depositories for the corpus of a preneed funeral contract trust.⁸

Existing law exempts a bank, national banking association, bank holding company, or their subsidiaries or affiliates from regulations governing delivery, refund, or substitution of financial services offered in the ordinary course of business.⁹ Existing law also exempts banks and savings associations and their holding companies, affiliates, and subsidiaries from a statutory award of attorney's fees for actions based on a book account.¹⁰ The enactment of Chapter 764 extends these exemptions to credit unions.¹¹

Existing law imposes restrictions on interest rates that may be charged and provides that the restrictions may be lifted for classes of persons.¹² Chapter 764 exempts any public retirement or pension system created, authorized, and regulated by the laws of a state other than California from interest rate restrictions.¹³

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See generally CAL. ADMIN. CODE tit. 16, §§ 1261-1276 (1986) (regulations governing reporting of preneed funds).

6. CAL. BUS. & PROF. CODE § 7737.7. *See* CAL. FIN. CODE § 14002 (definition and purpose of credit union). *See generally id.* §§ 14000-16154 (California Credit Union Law).

7. The credit union must be insured by the National Credit Union Share Insurance Fund. CAL. BUS. & PROF. CODE § 7737.7. *See generally* 12 U.S.C. § 1783 (1982 & Supp. 1986) (governing the creation and use of the National Credit Union Share Insurance Fund).

8. CAL. BUS. & PROF. CODE § 10145(d); *id.* § 7737.7.

9. *Id.* § 17538.3(e). *See also id.* § 17538 (regulations governing delivery, refund, or substitution of goods and services).

10. CAL. CIV. CODE § 1717.5. *See* CAL. CODE. CIV. PROC. § 337a (definition of book account). *See also* CAL. CIV. CODE § 1717 (providing for the award of attorney's fees and costs to the prevailing party in actions on a contract).

11. CAL. BUS. & PROF. CODE § 17538.3(e) (financial services); CAL. CIV. CODE § 1717.5 (attorney's fees).

12. CAL. CONST. art. XV, § 1.

13. CAL. CIV. CODE § 1916.2.

Business Associations and Professions; contractors—license provisions

Business and Professions Code §§ 7026.2, 7083.1 (new); §§ 7026.10, 7029.1, 7058.5, 7068.2, 7099, 7143 (amended).
AB 1742 (Bradley); 1987 STAT. Ch. 930

Existing law provides that an unlicensed¹ contractor² who uses an invalid contractor's license number with the intent to defraud is subject to prosecution.³ Chapter 930 provides that any person, licensed or unlicensed as a contractor, who uses an invalid contractor's license number with the intent to defraud is subject to prosecution.⁴ Existing law requires an individual who participates in a joint venture to obtain a joint venturer's license⁵ prior to bidding on a project.⁶ Applicants⁷ for a contractor's license are further required to take an open book examination concerning asbestos-related work.⁸ Chapter 930 requires the open book exam to be taken by all contractors at renewal of their license as well as first-time applicants.⁹

Existing law allows the Registrar of Contractors¹⁰ (Registrar) to issue a citation when the Registrar has probable cause to believe that a licensee or applicant for a contractor's license has violated provisions of the Contractor's State License Law.¹¹ Chapter 930 further allows the Registrar to issue a citation against any licensee or applicant for any acts or omissions which are grounds for denial, revocation, or suspension of license.¹²

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1. See BUS. & PROF. CODE § 7072 (requirements for issuance of a contractor's license).
 2. *Id.* § 7026 (definition of contractor).
 3. *Id.* § 7026.10. The punishment imposed may be a fine not to exceed \$10,000 or imprisonment for not more than one year, or both. *Id.*
 4. *Id.*
 5. *Id.* § 7029 (definition of joint venture license).
 6. *Id.* § 7029.1.
 7. See § 7066 (application procedure).
 8. *Id.* § 7058.5(b). The applicants receive a booklet containing updated information concerning asbestos-related work in preparation for the examination. *Id.* In addition to taking the examination, applicants are also required to pay a fee and return a bond with the open-book examination. *Id.* CAL. LAB. CODE § 6501.7 (definition of asbestos).
 9. *Id.* § 7058.5.
 10. *Id.* § 7011 (definition of duties of registrar).
 11. *Id.* § 7099.
 12. *Id.* Chapter 930 further declares the provisions contained therein to take effect immediately as an urgency statute. 1987 Cal. Stat. ch. 930, sec. 9, at ____.

Business Associations and Professions; depository check holding period

Financial Code § 867 (new).

AB 1300 (W. Brown); 1987 STAT. Ch. 1150

Existing law establishes varying maximum holding periods¹ within which a depository institution² must permit a depositor to draw upon a deposited item.³ Chapter 1150 provides that funds of five thousand dollars or less deposited to an account⁴ in the form of a cashier's check,⁵ teller's check,⁶ certified check,⁷ or depository check⁸ must be available for withdrawal on the second business day⁹ after the day of deposit.¹⁰ Under Chapter 1150, the maximum two business day holding period does not apply if there is reasonable cause¹¹ to believe that the check is uncollectible from the originating depository institution.¹²

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1. See CAL. ADMIN. CODE tit. 10, §§ 10.190405, 10.190406, 10.190407 (1986) (holding periods for deposited funds of \$2500 or less vary between one and ten business days after deposit depending upon the method of deposit and the institutions involved).

2. CAL. FIN. CODE § 866(a) (definition of depository institution).

3. CAL. ADMIN. CODE tit. 10, §§ 10.190405, 10.190406, 10.190407 (1986). See CAL. FIN. CODE § 866.5 (appropriate state regulatory agency to define a reasonable time for permitting customers to draw on items received for deposit).

4. The term "account" does not apply to investment thrift certificate accounts of industrial loan companies. See CAL. FIN. CODE § 867(c)(1) (account means any demand deposit account or similar transaction account at a depository institution).

5. *Id.* § 867(c)(3) (definition of cashier's check).

6. *Id.* § 867(c)(7) (definition of teller's check).

7. *Id.* § 867(c)(4) (definition of certified check).

8. *Id.* § 867(c)(5) (definition of depository check).

9. *Id.* § 867(c)(2) (business day means any day other than a Saturday, Sunday, or legal holiday).

10. *Id.* § 867(a). The check must be endorsed by the person to whom it was issued. *Id.* § 867(a)(1). Furthermore, the check must be deposited into an account in the name of a customer who has maintained an account with the receiving institution for a period of 60 days or more. *Id.* § 867(a)(4). Where the aggregate amount of funds by depository check exceeds \$5000 on any business day, only the first \$5000 will be available within two business days. *Id.* § 867(a)(5). The ordinary justifications for check holds, such as insufficient funds, closed accounts, stopped payments, and uncollected fund holds, do not apply to a cashier's check, teller's check, certified check, and depository check, that are direct obligations of the depository institution. Wechsler, *Delayed Funds Availability*, 35 SYRACUSE L. REV. 1117, 1155 (1984).

11. Reasonable cause requires the existence of facts which would cause a well-grounded belief in the mind of a reasonable person. CAL. FIN. CODE § 867(b).

12. *Id.* § 867(b). The receiving depository institution may also hold a depository check for longer than two business days upon reasonable belief that the drawer or drawee may be adjudicated bankrupt or placed in receivership or that the depository check is involved in a fraud or "kiting" scheme. *Id.*

Business Associations and Professions; conflicts of interests and interstate activities of savings associations.

Financial Code §§ 5200, 5201, 5202, 8501, 8502, 8503, 8504, 8505, 8506, 8507 (repealed); § 8500 (new); §§ 5300, 5301, 5302, 5303, 5304, 10001, 10004, 10005, 10006, 10007, 10011, 10014, 10015, 10016, 10017 (new); §§ 5606, 5622, 5654, 5758, 5810, 6503, 6522, 7300, 7450, 7500, 7675, 8030, 10000, 10010 (amended); §§ 10002, 10003, 10009, 10012, 10013, 10050 (amended and renumbered); Revenue and Taxation Code § 408 (amended).

SB 295 (Vuich); 1987 STAT. CH. 1162

*(Effective September 25, 1987)**

*(Expires January 1, 1991)***

*(Effective January 1, 1991)****

Existing law prohibits any person from wilfully making false statements to injure¹ an association,² influence any transaction with an association, or violate the Securities Association Law.³ Chapter 1162 prohibits any association's employee⁴ from wilfully entering⁵ a materially deceptive business record,⁶ omitting required⁷ records of

* Sections 5300, 5301, 5302, 5303, 5304, 5606, 5622, 5654, 5758, 5810, 6503, 6522, 7300, 7450, 7500, 7675, 8030, 8500, 10000, 10001, 10004, 10005, 10006, 10007, 10010, 10011, 10013, 10014, 10015, 10016, 10017, of the California Financial Code and section 408 of the California Revenue and Taxation Code became effective on September 25, 1987.

** Section 10050 of the California Financial Code must remain in effect until January 1, 1991, when it expires.

*** Sections 10002, 10003, 10009, 10050 of the California Financial Code become effective on January 1, 1991.

1. See generally RESTATEMENT (SECOND) OF TORTS, (1977) §§ 561 (a nonprofit corporation that relies on financial support from the public may be defamed by something that prejudices it in the estimation of the public), 562 (a corporation or partnership may be defamed by a matter that has a tendency to injure its business reputation, as by deterring persons from dealing with the association).

2. See CAL. FIN. CODE § 5102(a) (definition of association or savings association).

3. *Id.* §§ 5300 (incorporating 1983 Cal. Stat., ch. 1091, sec. 2, at ____ (enacting CAL. FIN. CODE § 5200)) (prohibits producing false or malicious statements or rumors calculated to injure an association), 5301 (incorporating 1983 Cal. Stat. ch. 1091, sec. 2, at ____ (enacting CAL. FIN. CODE § 5201)) (prohibits making false statements or wilfully overvaluing properties to influence an association's actions regarding specified transactions), and 5302 (incorporating 1983 Cal. Stat. ch. 1091, sec. 2, at ____ (enacting CAL. FIN. CODE § 5202)) (specifies that any person who violates these provisions is guilty of a public offense).

4. CAL. FIN. CODE § 5303 (includes employees, officers, directors, or agents).

5. *Id.* (or knowingly concurring in the making or publishing of a materially deceptive business record with the intent to deceive any of specified investigators).

6. *Id.* (includes an entry in any book, record, report, or statement concerning the business or affairs of the association or statement of condition or in connection with any of the association's transactions).

7. *Id.* (by law or by generally accepted accounting principles applicable to a savings institution).

the association, or concealing⁸ or destroying any of certain records.⁹ Any person who wilfully violates Chapter 1162 is subject to a fine of up to one thousand dollars for each day the violation continues.¹⁰

Existing law requires an association to insure its savings accounts with the Federal Savings and Loan Insurance Corporation (FSLIC) as a condition of doing business in California.¹¹ Chapter 1162 permits specified foreign¹² associations to obtain insurance from either the FSLIC or the Federal Deposit Insurance Corporation prior to doing business in this state.¹³ Existing law generally places conditions on the issuance and use of capital stock.¹⁴ Chapter 1162 prevents an association from loaning funds secured by the association's own capital stock.¹⁵ Existing law requires an association to obtain the Savings and Loan Commissioner's (Commissioner) permission to perform specified actions, including amending the articles of incorporation.¹⁶ Chapter 1162 requires an association to acquire this permission before amending the bylaws.¹⁷

Under existing law, an executed merger or consolidation agreement¹⁸ and a certificate of satisfaction from the Franchise Tax Board¹⁹ must

8. *Id.* (including altering, abstracting, or otherwise refusing inspection by specified officials).

9. *Id.* (the association's records, books, reports, or statements made, written or kept by the employee or another under the employee's direction). *See* Note, 44 CAL. L. REV. 413, 419 (1956) (the reasons that justify a right of inspection of a corporation's records by shareholders are even more applicable to directors). *See also* CAL. FIN. CODE § 5303 (violators are subject to increased penalties of a fine of up to \$10,000 or imprisonment for one year in the state prison or in a county jail, or both).

10. CAL. FIN. CODE § 5304 (this fine is in addition to any other applicable penalties or remedies provided by this division).

11. *Id.* § 5606(a).

12. *Id.* § 5606(b) (out-of-state or nonfederal associations).

13. *Id.* § 5606(a).

14. *Id.* § 5622. *See* CAL. CORP. CODE § 204(b) (articles of incorporation may reasonably restrict the right to transfer shares of any class or series, but no restriction may affect shares issued prior to the restriction's enactment unless the restriction was voted for by the shareholders). *See generally* O'Neil, *Restrictions on Transfer of Stock in Closely Held Corporations: Planning and Drafting*, 65 HARV. L. REV. 773, 777 (1952) (discusses the reasonableness of these restrictions).

15. CAL. FIN. CODE § 5622(e).

16. *Id.* § 5654 (requirement to gain permission before amending articles of incorporation specified by California Financial Code section 5654(a)(4)). *See generally* 6 B. WITKIN, SUMMARY OF CALIFORNIA LAW, *Corporations* §§ 54-63 (8th ed. 1974) (outline of regulation of articles of incorporation).

17. CAL. FIN. CODE § 5654(a)(4). *See generally* Buxbaum, *Preferred Stock-Law and Draftsmanship*, 42 CAL. L. REV. 243, 298 (1954) (powers and limitations of amendment).

18. CAL. FIN. CODE § 5758 (or an executed counterpart of the agreement and the certificates of each constituent association, and of the surviving association or any other corporation). *See generally* CALIFORNIA CONTINUING EDUCATION OF THE BAR, *California Business Enterprises* 1037 (requirements of an agreement).

19. CAL. FIN. CODE (indicating that all appropriate taxes have been paid or secured).

be filed with the Secretary of State before the action becomes effective.²⁰ Chapter 1162 modifies this provision by setting the effective date of a merger for a federal association²¹ as the date specified under regulations of the Federal Home Loan Bank Board.²² Prior law authorized an association²³ to pay capital stock dividends²⁴ out of the association's unreserved and unrestricted earned surplus, or in the association's own shares.²⁵ Chapter 1162 instead authorizes a dividend-paying association to distribute the association's own shares or make payments in cash or property²⁶ if there is a sufficient balance of unappropriated retained earnings.²⁷ Furthermore, Chapter 1162 requires the Commissioner's permission for any distribution of permanent capital or paid in surplus.²⁸ Any shareholder who receives any illegal distribution with knowledge of the illegality is liable to the association for the amount received.²⁹ The Commissioner may bring an action for the association's benefit to recover the distribution from any shareholder receiving an illegally-distributed dividend.³⁰

Existing law limits the type of investments that an association may make.³¹ Chapter 1162 creates an additional prohibition against any association transacting in³² dividends involving gold or silver bullion³³

20. *Id.* § 5758 (the written approval of the Savings and Loan Commissioner (Commissioner) must be attached before filing). After the Secretary of State has approved the agreement, the agreement must be filed with the Commissioner. *Id.* See CALIFORNIA CONTINUING EDUCATION OF THE BAR, *California Business Enterprise* 1094 (filing of agreement and effect).

21. See CAL. FIN. CODE § 5102(b) (definition of federal association).

22. *Id.* § 5758.

23. 1983 Cal. Stat. ch. 1091 § 2, at 3886 (enacting CAL. FIN. CODE § 6522(a)) (except an association that failed to maintain the minimum required level for statutory net worth, an impaired association or an association that would become impaired by payment of a capital stock dividend).

24. *Id.* (in cash or property).

25. *Id.* See 6 B. WITKIN, SUMMARY OF CALIFORNIA LAW, *Corporations* § 150 (8th ed. 1974) (discusses payment of dividends).

26. *Id.* § 6522(a) (these payments may be made only if there is a sufficient balance of unappropriated retained earnings). Income kept in the business, since the business's latest or initial organization, which has not been appropriated or reserved for a specific purpose, constitutes unappropriated retained earnings. *Id.*

27. *Id.* (dividends may not be distributed unless the association meets its required statutory net worth before and after distribution). Dividends may not be paid if payment would impair the association. *Id.*

28. *Id.* § 6522(c).

29. *Id.* § 6522(d) (illegal distributions are those prohibited by Chapter 1162).

30. *Id.* § 6522(d).

31. *Id.* § 7300(a) (investments in real property, tangible personal property, and interests in real property for conduct of the association's or the association's service corporation's business).

32. *Id.* § 7300(c) (or with).

33. *Id.* (or related instruments or securities except gold coins minted and issued by the United States Treasury).

without gaining prior written approval by the Commissioner.³⁴ Chapter 1162 refines³⁵ existing law that allows an association to transact specified loans.³⁶ Existing law exempts loans made by certain institutional lenders³⁷ from the usury provisions of the California Constitution.³⁸ Chapter 1162 adds foreign savings associations³⁹ to the class of institutions exempt from these usury provisions.⁴⁰ Existing law requires county assessors to prevent public inspection of private documents.⁴¹ County assessors, however, must disclose information or permit access to assessment records to various local and state agencies.⁴² Chapter 1162 allows officials of the Department of Savings and Loan to similarly inspect assessment records.⁴³

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34. *Id.*

35. *Id.* § 7450(b) (allows direct or indirect loan transactions).

36. *Id.* (loans transacted with or intended to benefit any director, officer, affiliated person, or any parent or subsidiary).

37. *Id.* § 7675(b) (association, federal association, savings and loan holding companies, savings and loan holding companies that are not associations, or service corporations that are not subsidiaries of these institutions).

38. *Id.* (provisions specified by article XV of the California Constitution).

39. *See id.* § 7675(c) (definition of foreign savings association).

40. CAL. FIN. CODE § 7675(c) (includes service corporations that are not subsidiaries of such associations).

41. CAL. REV. & TAX. CODE § 408(a). *See* CAL. GOV'T CODE §§ 646 (inspection of assessor's records by assessing agencies), 451 (confidential nature of property statements). *See also* State Bd. of Equalization v. Watson, 68 Cal. 2d 307, 311, 437 P.2d 761, 763, 66 Cal. Rptr. 377, 379 (1968) (State Board of Equalization had the right to require the county assessor to comply with the statutory duty of making available for the Board's inspection certain records in his custody pertaining to the assessment of three airlines).

42. *Id.* § 408(c) (agencies include the State Franchise Tax Board and the Department of Transportation). *See* CAL. GOV'T CODE §§ 6253 (right to inspect public records), 6252 (definition of public records). *But see id.* § 6254 (exemption of particular records).

43. CAL. REV. & TAX. CODE § 408(c).

Business Associations and Professions; public telephone service

Public Utilities Code § 728.3 (new); § 786 (amended).
SB 817 (Rosenthal); 1987 STAT. Ch. 1172

Existing law authorizes the Public Utilities Commission to supervise and regulate public utilities,¹ including telephone corporations.² With the enactment of Chapter 1172, the legislature intends to encourage consideration of public need and safety in the location and placement of public telephones.³ Before a telephone corporation may remove a public telephone for other than public safety or nuisance reasons, Chapter 1172 requires a notice of the impending removal to be posted on the telephone for thirty days.⁴ Chapter 1172, however, exempts this notice requirement when a public telephone is removed at the request of an owner or lessee of property.⁵ In addition, every telephone corporation providing public telephone service must provide to each residential customer a description of public telephone services and policies.⁶

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1. CAL. PUB. UTIL. CODE § 216 (definition of public utilities).
 2. *Id.* § 701; *id.* § 234 (definition of telephone corporation).
 3. 1987 Cal. Stat. ch. 1172, sec. 1, at ____.
 4. CAL. PUB. UTIL. CODE § 728.3(a) (the notice must contain a telephone number which a customer may call for further information).
 5. *Id.* § 728.3(b).
 6. *Id.* § 786 (description must be sent annually, beginning on or before March 1, 1988, and must include information on how a customer can get additional information or assistance).

Business Associations and Professions; liability of corporate agents

Corporations Code § 204.5 (new); §§ 204, 309, 317 (amended).
AB 1530 (W. Brown); 1987 STAT. Ch. 1203
(Effective September 27, 1987).

Existing law specifies that the duties of a director¹ of a corporation² must be performed in good faith and in a manner the director believes is in the best interest of the corporation.³ Under Chapter 1203, the director must also perform those duties in a manner the director believes is in the best interest of the corporation's shareholders.⁴ Under existing law, the articles of incorporation may contain provisions for the regulation of the business affairs of the corporation.⁵ Chapter 1203 allows the articles of incorporation to also contain a provision eliminating or limiting the personal liability of a director for a breach of a director's duties to the corporation and the corporation's shareholders.⁶ The personal liability of the director, however, may not be eliminated or limited for the following: (1) Acts or omissions involving intentional misconduct or a knowing and culpable violation of the law; (2) acts or omissions the director believes are contrary to the best interest of the corporation and the corporation's shareholders, or that involve an absence of good faith by the director; (3) any transaction from which the director received an improper personal benefit; (4) acts or omissions that show a reckless disregard for the director's fiduciary duties when the director was aware, or should have been aware, of the risk of serious injury

1. CAL. CORP. CODE § 164 (definition of directors).

2. *Id.* § 162 (definition of corporation).

3. *Id.* § 309(a). See *Jewel Companies, Inc. v. Payless Drug Stores Nw., Inc.*, 510 F. Supp. 1006 (D.C. 1981) (a contractual provision which obligates a corporation's officers to adhere to a reorganization plan that is not in the best interest of the shareholders contravened the director's duties). See generally Stern, *The General Standard of Care Imposed on Directors Under the New California General Corporation Law*, 23 UCLA L. REV. 1269 (1976) (discussing the duty imposed on directors).

4. CAL. CORP. CODE § 309(a). See *id.* § 185 (definition of shareholder). See *Professional Hockey Corp. v. World Hockey Ass'n*, 143 Cal. App. 3d 410, 414-15, 191 Cal. Rptr. 773, 776-77 (1983) (corporate directors have a fiduciary duty in the management of corporate affairs and are under obligations of trust and confidence to the corporation and the corporation's stockholders).

5. CAL. CORP. CODE § 204.

6. *Id.* § 204(a)(10). If the articles of a corporation include the following provision the corporation is considered to have adopted a provision eliminating liability: "The liability of the directors of the corporation for monetary damages shall be eliminated to the fullest extent permissible under California Law." *Id.* § 204.5.

to either the corporation or shareholders; (5) acts or omissions that constitute an unexcused pattern of inattention that amounts to an abdication of the director's duty to the corporation and shareholders; (6) a contract in which the director has a material financial interest;⁷ or (7) corporate actions subjecting directors to joint and several liability.⁸ In addition, the articles of incorporation may not contain a provision eliminating or limiting the liability of any officer for an act or omission as an officer.⁹ Under Chapter 1203, the articles of incorporation may also contain a provision authorizing the indemnification of agents¹⁰ in excess of the amount expressly permitted by statute¹¹ for those agents who breach their duty to the corporation and stockholders.¹² The agent, however, may not be indemnified for any acts, omissions, or transactions for which a director may not be relieved of liability or expressly prohibited by statute.¹³

Under existing law, a corporation may indemnify an agent only if the agent acted in good faith and in a manner believed to be in the best interest of the corporation.¹⁴ Existing law further allows an agent to be indemnified by the corporation for expenses, judgments, fines, settlements, or other amounts, only if authorized in the specific case and only if the agent has met the standard of conduct set by the directors, shareholders, or court.¹⁵ Under Chapter 1203, an agent must also have acted in the best interest of the shareholders.¹⁶ Under Chapter 1203, the determination for indemnification may be made by independent legal counsel if a quorum of directors is not obtainable.¹⁷

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7. See *id.* § 310 (validity of contracts in which a director has a material financial interest).

8. *Id.* § 204(a)(10). See *id.* § 316 (actions and damages for corporate actions subjecting directors to joint and several liability).

9. *Id.* The officer's liability may not be limited even if the officer is a director or the officer's actions, if negligent or improper, have been ratified by the directors. *Id.*

10. See *id.* § 317(a) (providing a list of those persons who are agents).

11. See *id.* § 317 (the corporation may indemnify an agent for expenses, judgments, fines, settlements, and other amounts actually and reasonably incurred).

12. *Id.* § 204(a)(11).

13. *Id.* See *id.* § 317(c) (providing for when no indemnification may be made).

14. *Id.* § 317(c). See generally Heyler, *Indemnification of Corporate Agents*, 23 UCLA L. REV. 1255 (1976) (discussing the reasoning and purposes behind the indemnification statute).

15. CAL. CORP. CODE § 317(e). See *Harper v. Kaiser Cement Corp.*, 144 Cal. App. 3d 616, 619-20, 192 Cal. Rptr. 720, 722-23 (1983) (a former officer and director of a corporation who was convicted of federal antitrust law violations and agreed not to accept reimbursement from the corporate employer for fines as part of probation waived any right to reimbursement).

16. CAL. CORP. CODE § 317(c).

17. *Id.* § 317(e)(2).

Business Associations and Professions; liabilities and indemnification of corporate officers

Corporations Code §§ 5239, 7231.5, 9247 (new).
SB 1526 (Lockyer); 1987 STAT. Ch. 1206

Existing law provides for the formation of nonprofit corporations.¹ Chapter 1206 protects volunteer directors² and executive committee officers³ of a nonprofit corporation from personal liability⁴ to third parties caused by the negligent act or omission⁵ in the performance of duties as a director or officer if the damages are covered by liability insurance.⁶

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1. CAL. CORP. CODE § 5120. *See id.* § 5060 (definition of nonprofit public benefit corporation). *See generally* CALIFORNIA CONTINUING EDUCATION OF THE BAR, *Non-profit Corporations*, § 2 (non-profit organizations may be formed as corporations, unincorporated associations, or trusts). *See also generally* CALIFORNIA CONTINUING EDUCATION OF THE BAR, *Non-profit Corporations*, § 8 (the corporate form is generally the most flexible and offers individuals the best protection from personal liability).

2. *See* CAL. CORP. CODE §§ 5047 (definition of director), 7231.5(b) (definition of volunteer).

3. *See id.* § 7231.5(c) (definition of executive committee officer). *See also* *Angelus Securities Corp. v. Ball*, 20 Cal. App. 2d 423, 434, 67 P.2d 152, 157 (1937) (a director may be liable for acts of other officers if the director participated in the acts, was negligent in supervising the business, or was negligent in the appointment of the wrongdoer). The director cannot be held liable for wrongs of officers that take place after the director has ceased that employment. *Id.*

4. *See* CAL. CORP. CODE § 9247(a) (Chapter 1206 specifies that these non-profit religious organizations' volunteer directors and executive committee officers are exempt from personal liability for monetary damages).

5. *See id.* § 5239(a).

6. *Id.* The negligent act or omission must have been within the scope of the director or officer's duties, performed in good faith, and may not have been reckless, wanton, intentional, or grossly negligent. *Id.* § 5239(a)(3). The insurance policy may be issued to the corporation either as a general liability policy or a director's and officer's liability policy, or personally to the director or officer. *Id.* § 5239(a)(4). If the damages are not covered by insurance, the director or officer may be relieved of liability if the corporation's board of directors made all reasonable efforts to obtain liability insurance. *Id.* Chapter 1206, however, does not limit the corporation's liability for damages caused by any director or officer's acts or omissions. *Id.* § 5239(d). Chapter 1206 does not reduce a non-profit public benefit or religious corporation's director or officer's liability for self-dealing transactions, illegal or improper corporate distributions, loans and guarantees, conflict of interest transactions, or in any proceedings brought by the Attorney General. *Id.* §§ 5239(e)(1), (2), 9247(e)(1), (2). *See id.* §§ 9243(a) (definition of self-dealing transaction), 309 (definition of standard of care for directors), 309(b) (a director may rely on information received from officers, employees, counsel, accountants, and board committees, if the director believes them to be reliable and competent and does not know of circumstances indicating a need for further inquiry), 309(c) (compliance with the standard fully discharges a person's obligations as a director). *See also* *Findley v. Garret*, 109 Cal. App. 2d 166, 178, 240 P.2d 421, 428 (1952) (where the act or omission involves a question of policy or business judgment, a director can not be held for an erroneous decision in the absence of a showing of fraud, bad faith, or negligence).

Business Associations and Professions; satellite wagering facilities

Business and Professions Code § 19601 (amended).
AB 805 (Condit); 1987 STAT. CH. 1276

Existing law authorizes the California Horse Racing Board¹ to permit any licensed horse racing association² to accept wagers³ on horse races⁴ comprising the Breeders' Cup and feature races having a gross purse of fifty thousand dollars or more.⁵ Chapter 1276 authorizes the California Horse Racing Board to permit satellite wagering facilities to accept wagers on Breeders' Cup and feature races having a gross purse of fifty thousand dollars or more.⁶

Existing law provides that the funds available for distribution to the licensed racing association which conducts the racing meeting with the Breeders' Cup program or the feature race, and those funds available for distribution to horsemen must be equally distributed⁷ between the association and the horsemen.⁸ Chapter 1276 provides that the portion of funds going to the horsemen be divided with one-half going to the horsemen participating in the racing meeting⁹ and one-half to the horsemen racing at a satellite wagering facility conducting the same breed of racing as the licensed racing association conducting the Breeders' Cup program or feature race.¹⁰

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1. CAL. ADMIN. CODE tit. 4, §§ 1400-2050 (establishes the California Horse Racing Board). See CAL. BUS. & PROF. CODE § 19421 (the board consists of seven members, appointed by the Governor).

2. CAL. ADMIN. CODE tit. 4, §§ 1430-1470 (establishing licensed racing associations). See CAL. BUS. & PROF. CODE § 19403 (definition of association).

3. CAL. BUS. & PROF. CODE § 19411 (definition of parimutuel wagering).

4. CAL. ADMIN. CODE tit. 4, § 1420(s) (definition of race).

5. CAL. BUS. & PROF. CODE § 19601 (providing that the association is conducting a racing meeting at the time in this state).

6. *Id.* (satellite wagering facilities need not be conducting a racing meeting at the time of the Breeders' Cup or other feature races).

7. *Id.* (in the form of purses).

8. *Id.*

9. *Id.* (with the Breeders' Cup program or feature race having a gross purse of \$50,000 or more).

10. *Id.*

Business Associations and Professions; on-premises advertising displays

Business and Professions Code §§ 5491.1, 5491.2, 5498.1, 5498.2, 5499.1, 5499.2, 5499.3, 5499.4, 5499.5, 5499.6, 5499.7, 5499.8, 5499.9, 5499.10, 5499.11, 5499.12, 5499.13, 5499.14, 5499.15, 5499.16 (new); § 5490 (amended).
SB 512 (Ellis); 1987 STAT. Ch. 1281

Existing law declares that advertising displays¹ that do not conform to specified requirements² are public nuisances and may be removed.³ Chapter 1281 permits cities or counties to adopt resolutions⁴ declaring an illegal or abandoned on-premises advertising display⁵ to be a public nuisance and to provide for abatement.⁶ When a city or county

1. CAL. BUS. & PROF. CODE § 5202 (advertising displays includes advertising structures and signs). *See id.* §§ 5203 (definition of advertising structure); 5221 (definition of sign). Except as otherwise provided, sections 5200 through 5486 of the California Business and Professions Code apply only to the placing of advertising displays within view of highways located in unincorporated areas of California and within 660 feet from the edge of the right-of-way of interstate highways or primary highways, including the portions of such highways located in incorporated areas. *Id.* § 5271.

2. *Id.* §§ 5226 (regulation of advertising displays adjacent to interstate or primary highways), 5300-5303 (license provisions for outdoor advertising), 5350-5366 (requirements for permit to place advertising display), 5400-5419 (regulations of name, wind resistance, obscenity, improper displays, location, prohibited displays, temporary displays, business area displays, farm produce displays, displays near highways, displays on bus passenger shelters or benches, maintenance, removal or limitation of use, and compensation for removal), 5440-5443 (regulating displays adjacent to landscaped freeways).

3. *Id.* § 5461. *See id.* §§ 5229 (sections 5200 through 5499 of the California Business and Professions Code are not to be construed as permitting placement or maintenance of any advertising display prohibited by law or by city or county ordinance), 5464 (violation of any provision of sections 5200 through 5486 of the California Business and Professions Code is a misdemeanor).

4. *Id.* § 5499.2(a). The resolution must describe the property upon which the nuisance is located by giving lot and block number and street address, if known. *Id.* There is no limit to the number of parcels of private property that may be included in the resolution. *Id.* *See id.* §§ 5499.2(b) (provisions for notifying the owners of the nuisance), 5499.7 (requirement for hearing objections to the proposed removal of the display and procedure for conducting the hearing and ordering abatement).

5. *Id.* § 5499.1(a) (definition of illegal on-premises advertising display).

6. *Id.* § 5499.2(a). *See id.* § 5499.3. After the resolution is adopted, the enforcement officer must post a notice of the resolution on the premises where the display is located. *Id.* *See also id.* §§ 5499.1(c) (definition of enforcement officer), 5499.4, 5499.5, 5499.6 (form, time for posting, and time and manner of mailing notice), 5499.9 (owner may remove display before enforcement officer arrives), 5499.8, 5499.10(a), (b) (enforcement officer may enter private property to abate the nuisance, must keep an accounting of the cost of each separate abatement and submit a report thereof to the city or county), 5499.10(c) (city or county must hear objections to the report when received, may modify the report as necessary, and must confirm the report by motion or resolution), 5499.11 (the city or county may contract out the abatement of nuisances, in which case the contractor must submit the report). The costs of abatement incurred by the city or county become a special assessment and a lien

adopts an ordinance⁷ prohibiting or regulating the use of an on-premises advertising display,⁸ Chapter 1281 requires the ordinance to provide for the inventory and identify illegal⁹ or abandoned¹⁰ displays within the city or county.¹¹ Existing law prohibits cities or counties from removing¹² an on-premises advertising display unless the owner of the display is compensated.¹³ Under existing law, displays that are made nonconforming by an ordinance or regulation providing for their amortization¹⁴ are excluded from existing requirements providing that the owner must be compensated for compelled removal of a display.¹⁵ When a person applies for a permit to modify a nonconforming, legally in-place display¹⁶ during the amortization period, Chapter 1281 prohibits a city or county from conditioning the issu-

attaches against the parcel upon which the illegal display is located upon recording with the county recorder, unless the parcel has been conveyed to a bona fide purchaser for value. *Id.* § 5499.12. A copy of the confirmed report must be given to the tax assessor, who will add the assessment to the next tax bill for the parcel. *Id.* The amount of the assessment is to be collected at the time and in the manner of ordinary municipal taxes or by issuing separate bills and receipts. *Id.* See also *id.* §§ 5499.13 (provision for collection of fees by enforcement officer), 5499.14 (the city or county may order a refund when an assessment has been erroneously levied), 5499.15 (permitting payment from the city or county general fund of damages caused by an employee in connection with the abatement of an illegal display).

7. *Id.* § 5491.1 (applies to ordinances or regulations adopted, introduced, modified, or amended after January 1, 1988, but not to ordinances limited to the construction of new on-premises advertising displays).

8. *Id.* § 5490(b) (definition of on-premises advertising display). See *id.* § 5490(a) (sections 5490 through 5499 of the California Business and Professions Code applies only to lawfully erected on-premises advertising displays).

9. *Id.* § 5490(e) (definition of illegal advertising display).

10. *Id.* § 5490(f) (definition of abandoned advertising display).

11. *Id.* § 5491.1. The inventory and identification must begin within six months of adoption of the ordinance or regulation. *Id.* The city or county must begin to abate the identified, pre-existing illegal and abandoned displays within 60 days of the expiration of the 6-month period. *Id.* See *id.* § 5491.2. A city or county may cover the costs of inventory and identification by collecting fees from the owners or lessees of the displays. *Id.* The amount of the fee is within the discretion of the city or county, but must be reasonable and may be set after determining the total estimated reasonable cost. *Id.*

12. *Id.* § 5491.1 (or abating or limiting the use, maintenance, or repair).

13. *Id.* § 5491 (this provision applies in spite of any ordinance or regulation requiring removal or limitation). See *id.* §§ 5492 (fair and just compensation is presumed to be paid when the fair market value is paid), 5493 (as an alternative to paying fair market value, fair and just compensation may be made by paying the actual replacement cost). But see *id.* §§ 5495 (a city or county may pass a regulation or an ordinance requiring the removal without compensation of displays that meet certain requirements), 5497 (outlining the criteria that must be met by an ordinance or regulation requiring removal of a display without compensation).

14. *Id.* § 5494 (ordinances that provide for amortization and that make nonconforming lawfully in-place displays exempted from California Business and Professions Code section 5491).

15. *Id.* § 5491. See *id.* §§ 5494 (this provision applies only to an ordinance or a regulation introduced or adopted prior to March 12, 1983), 5491(a)-(e) (outlining provisions for exemption, presumption of illegality, annexed property, amendments or modifications, and reenactment).

16. *Id.* § 5498.2(a) (if the modification does not include a structural change in the display).

ance of the permit upon a change of ownership of any existing business.¹⁷ When a person applies for a business license or a permit to construct a legal display, Chapter 1281 prohibits a city or county from conditioning issuance upon the removal of any other display.¹⁸

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17. *Id.* This prohibition only applies when the other display is located on the same real property where the business is to be or has been maintained if both of the following apply: (a) The other display is located within the same commercial complex which is zoned for commercial occupancy or use, but at a different business location from that for which the permit or license is sought; and (b) the other display is not owned or controlled by the permit applicant, and the permit applicant is not the agent of the person who owns or controls the display. *Id.* See *id.* § 5498.2(b) (these provisions do not apply to any ordinance introduced or adopted prior to March 12, 1983, or adopted pursuant to California Business and Professions Code section 5497(j), if the ordinance requires conformity upon change of ownership instead of by an amortization schedule).

18. *Id.* § 5498.1 (also applies to the conformance, repair, or modification of the display).

Business Associations and Professions; California Revised Limited Partnership Act—modifications

Corporations Code §§ 15618, 15638 (new); §§ 15611, 15612, 15614, 15615, 15621, 15622, 15623, 15624, 15625, 15627, 15632, 15634, 15636, 15637, 15652, 15672, 15674, 15701, 15712 (amended); Government Code § 12214 (amended).

AB 579 (Stirling); 1987 STAT. CH. 1364

In 1983, California enacted the California Revised Limited Partnership Act (CRLPA).¹ Chapter 1364 is enacted to make modifications to the CRLPA.²

I. LIABILITY OF PARTNERS

Under prior law, a limited partner³ participating in the control of

1. See generally CAL. CORP. CODE §§ 15611-15723 (CRPLA).

2. The CRLPA governs all limited partnerships formed after July 1, 1984. 1983 Cal. Stat. ch. 1223, at 4687 (enacting CAL. CORP. CODE §§ 15611-15723). See also *Review of Selected 1983 California Legislation*, 15 PAC. L.J. 479 (1984) (analysis of the CRPLA); *Review of Selected 1984 California Legislation*, 16 PAC. L.J. 511 (1985) (analysis of 1984 revisions to CRLPA).

3. CAL. CORP. CODE § 15611(i) (definition of limited partner).

the limited partnership⁴ was responsible for any partnership obligation, except liabilities to persons⁵ transacting business⁶ with the partnership who did not know of the limited partner's participation in the control of the limited partnership.⁷ With the enactment of Chapter 1364, a limited partner participating in the control of the partnership is liable only to persons who have actual knowledge of the partner's⁸ participation and reasonably believe the limited partner is a general partner.⁹ Existing law enumerates several activities in which a limited partner may engage that do not constitute participation in the control of the partnership.¹⁰ Chapter 1364 enlarges the "safe harbor"¹¹ to encompass any matter stated in the partnership agreement¹² as subject to the approval of the limited partners.¹³ Under prior law, a limited partner whose name was included in the name of the partnership was liable to all persons unaware that the limited partner was not a

4. *Id.* § 15611(j) (definition of limited partnership).

5. *Id.* § 15611(o) (definition of person).

6. Chapter 1364 defines transacting intrastate business as "entering into repeated and successive transactions of business in this state, other than intrastate or foreign commerce." *Id.* § 15611(t)(1). Pursuant to Chapter 1364, however, a foreign limited partnership engaged in the following activities is not considered to be transacting intrastate business: (1) Maintaining, defending, or settling suits, claims, or actions; (2) holding meetings; (3) maintaining bank accounts; (4) maintaining offices for the disposition of securities; (5) selling through independent contractors; (6) soliciting orders which become contracts upon acceptance given outside the state; (7) creating evidences of security interests; and (8) conducting isolated transactions completed within 180 days. *Id.* § 15611(t).

7. 1984 Cal. Stat. ch. 103, sec. 7, at 333 (amending CAL. CORP. CODE § 15632(a)).

8. Partner means a general or limited partner. CAL. CORP. CODE § 15611(m).

9. *Id.* § 15632(a). See also REV. UNIF. LIMITED PARTNERSHIP ACT § 303, 6 U.L.A. ____ (Supp. 1985) ("it is not sound public policy to hold a limited partner who is not also a general partner liable for the obligations of the partnership except to persons who have done business with the limited partnership reasonably believing, based on the partner's conduct, that he is a limited partner.").

10. CAL. CORP. CODE § 15632(b). The "safe harbors" comprise: (1) Being a contractor for, or an agent or employee of the limited partnership or a general partner; (2) being an officer, director, or shareholder of a corporate general partner; (3) consulting with and advising a general partner; (4) acting as a surety for the limited partnership or guaranteeing debts of the partnership; (5) approving or disapproving an amendment to the partnership agreement; (6) voting or calling a meeting for matters related to the business of the partnership; (7) winding up the partnership; (8) filing certificates; (9) serving on an audit committee; and (10) exercising rights and powers permitted limited partners under the CRPLA. *Id.* The matters related to the business of the partnership for which limited partners may vote or call a meeting are: (1) The dissolution and winding up of the partnership; (2) transfer of a substantial amount of the assets of the partnership outside the ordinary course of business; (3) incurrence of indebtedness outside the ordinary course of business; (4) a change in the nature of the business; (5) transactions where the limited partners and general partners have a conflict of interest; (6) the removal or admission of a general partner; (7) an election to continue the business; and (8) any business matters that the partnership agreement states are subject to the approval of the limited partners. *Id.* § 15632(b)(5)(A)-(I).

11. See *infra* note 10 and accompanying text.

12. CAL. CORP. CODE § 15611(n) (definition of partnership agreement).

13. *Id.* § 15632(b)(5)(K).

general partner.¹⁴ Under Chapter 1364, such a partner is liable only to persons who reasonably believe the partner is a general partner.¹⁵

Existing law permits the partners to agree to compromise the obligation of a partner to make a contribution¹⁶ or return money to the partnership.¹⁷ Prior law provided that a person holding a claim against a partnership, who did not receive notice of the compromise before the claim arose, might enforce a partner's original obligation to make a contribution or return money.¹⁸ Chapter 1364 narrows existing law to permit enforcement of the original obligation only if the claimant knew of the original obligation before the claim arose, and if the claim arose before the compromise.¹⁹ Chapter 1364 also provides that conditional obligations may not be enforced by the claimant unless the conditions have been satisfied or waived.²⁰

II. CERTIFICATES

Existing law requires the general partners to file a certificate of limited partnership²¹ to form a limited partnership.²² With the enactment of Chapter 1364, the certificate of limited partnership is no longer required to set forth the term of the partnership.²³ Existing law requires the general partners to file a certificate of amendment within thirty days of the occurrence of specified changes in the limited partnership.²⁴ Chapter 1364 adds to the list of enumerated events by

14. 1984 Cal. Stat. ch. 103, sec. 7, at 333 (amending CAL. CORP. CODE § 15632(a)). See CAL. CORP. CODE § 15611(g) (definition of general partner).

15. CAL. CORP. CODE § 15632(d).

16. *Id.* § 15611(d) (definition of contribution).

17. *Id.* § 15636(c).

18. 1983 Cal. Stat. ch. 1223, sec. 10, at 4710 (enacting CAL. CORP. CODE § 15652).

19. CAL. CORP. CODE § 15652.

20. *Id.*

21. *Id.* § 15611(c) (definition of certificate of limited partnership).

22. *Id.* § 15621(a). The certificate must set forth the name of the limited partnership, the street address of the principal executive office, the names and addresses of the general partners, the name and address of the agent for service of process and any other matters the filer determines to include. *Id.* Chapter 1364 deletes the provision that requires the partnership to maintain an office in the state. Compare 1985 Cal. Stat. ch. 171, sec. 1, at ____ (amending CAL. CORP. CODE § 15621(a)) (requiring the certificate to provide the address of an office within the state) with CAL. CORP. CODE § 15621(a)(2) (requiring only the address of the principal office). Chapter 1364 also provides that there is no requirement that a partner have a preexisting relationship with another partner in order to form the limited partnership. CAL. CORP. CODE § 15621(b). Furthermore, Chapter 1364 specifies that the partners may enter a partnership agreement before or after the filing of the certificate of limited partnership. *Id.* § 15621(a).

23. Compare CAL. CORP. CODE § 15621(a) with 1985 Cal. Stat. ch. 171, sec. 1, at ____ (amending CAL. CORP. CODE § 15621(a)).

24. CAL. CORP. CODE § 15622(b). The certificate of amendment must be filed within 30 days after (1) a change in the name of the limited partnership; (2) a change in the address of

requiring a certificate to be amended when a general partner ceases to be a general partner.²⁵ On dissolution of the limited partnership, existing law requires the general partners to file a certificate of dissolution.²⁶ Chapter 1364 supplements existing law to allow the general partners to nullify a certificate of dissolution by filing a certificate of continuation.²⁷ A certificate of continuation, however, may be filed only when: (1) All partners consent to continue the business of the limited partnership; (2) the dissolution was initiated through the consent of all general partners and a majority-in-interest of the limited partners²⁸ and each partner consenting to the dissolution agrees to revoke the consent; or (3) the partnership was not dissolved.²⁹

Under prior law, a partner was permitted to file any certificate not executed and filed by a general partner who was required to file the certificate.³⁰ Chapter 1364 reenacts prior law but requires the partner seeking the filing of a certificate to petition the court to order the certificate filed.³¹ If the general partner's failure to file the certificate is without justification, the court may award reasonable expenses and attorney's fees to the petitioning party.³²

III. ASSIGNMENT OF PARTNERSHIP INTERESTS

Under existing law, the mere assignment of a partnership interest does not entitle the assignee to exercise the rights of a partner.³³ An assignee, however, may become a limited partner if the partnership agreement mandates this, or if the partners consent.³⁴ Chapter 1364 entitles an assignee of a partnership interest to the rights of a limited

the principal executive office, a general partner, or the agent for service of process; (3) the admission of a new general partner; (4) discovery of a defect in the amendment; and (5) when the general partners determine that an amendment is required. *Id.*

25. *Id.* § 15622(b)(4).

26. *Id.* § 15623(a)(1); *see also id.* §§ 15681-15685 (governing dissolution of a limited partnership).

27. *Id.* § 15623(c)(1).

28. *Id.* § 15611(l) (definition of majority-in-interest of limited partners).

29. *Id.* § 15623(c)(1).

30. 1986 Cal. Stat. ch. 344, sec. 2, at ____ (amending CAL. CORP. CODE § 15625 (West's Cal. Leg. Serv. 1985, at 234)).

31. CAL. CORP. CODE § 15625.

32. *Id.* A person who has made a contribution to the partnership and reasonably believes that person has become a limited partner may file a certificate when the general partner fails to do so. *Id.* § 15633(a). Chapter 1364 provides that a general partner is liable for any misstatement contained in the certificate filed by the person, provided the partner knew or should have known the statement was false and the injured party relied on the misstatement. *Id.* § 15622(d).

33. *Id.* § 15672.

34. *Id.* § 15674(a).

partner, to information, and to financial statements.³⁵ Chapter 1364 also permits the partnership agreement to authorize the partnership to issue certificates of interest to evidence the interest of a partner.³⁶ The terms of the agreement may permit assignees of the interest to be admitted into the partnership as additional or substituted partners.³⁷ The certificate of interest is not required to be a security.³⁸

IV. CLASS ACTIONS

Existing law permits a limited partner to bring a class action on behalf of all or some of the limited partners to enforce a claim against a partnership or the general partners.³⁹ Under prior law, a class action might be maintained regardless of the number of the class as long as each prospective member of the class was provided the opportunity to opt out of the class.⁴⁰ With the enactment of Chapter 1364, class actions brought by limited partners⁴¹ are generally governed by the law of class actions,⁴² except that the class is not required to be so large that joinder is impracticable.⁴³

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35. *Id.* § 15672. *See also id.* § 15634 (rights to information and financial statements).

36. *Id.* § 15638. *See generally* Comment, *Are Limited Partnership Interests Securities? A Different Conclusion Under the California Limited Partnership Act*, 18 PAC. L.J. 125 (1986) (discussing the subjection of partnership interests to securities regulation).

37. CAL. CORP. CODE § 15638.

38. *Id.*

39. *Id.* § 15701.

40. 1983 Cal. Stat. ch. 1223, sec. 10, at 4716 (enacting CAL. CORP. CODE § 15701).

41. Chapter 1364 allows any limited partner of a domestic or foreign limited partnership to bring a class action. CAL. CORP. CODE § 15701.

42. *See* CAL. CIV. PROC. CODE § 382 (governing class actions). *See also* Danzig v. Jack Grynberg & Assoc., 161 Cal. App. 3d 1128, 1136-37, 208 Cal. Rptr. 336, 340-41 (1984) (certification of limited partners as a class).

43. CAL. CORP. CODE § 15701.

Business Associations and Professions; liability of psychotherapists for sexual contact

Business and Professions Code §§ 337, 728 (new); Civil Code § 43.93 (new).

SB 1406 (Watson); 1987 Cal. STAT. Ch. 1474

SB 1277 (Watson); 1987 Cal. STAT. Ch. 1448

Under existing law, a health care provider¹ who engages in sexual relations with a patient connected with the functions or duties of the provider's occupation is subject to disciplinary action.² Chapter 1474 creates a civil cause of action for a victim of sexual contact³ by a psychotherapist.⁴ Under Chapter 1474, a psychotherapist is liable for injury arising from sexual contact (1) during the therapeutic relationship,⁵ (2) within two years after the termination of therapy, or (3) when the contact occurs by means of therapeutic deception.⁶ Pursuant to Chapter 1448, a psychotherapist⁷ who is made aware by a patient of alleged sexual contact during the course of a prior treatment⁸ by a previous psychotherapist must inform the patient of the existence

1. See generally CAL. BUS. & PROF. CODE §§ 500-4998.7 (California law governing healing arts professionals).

2. *Id.* § 726. See also *Atienza v. Taub*, 194 Cal. App. 3d 388, 391-94, 239 Cal. Rptr. 454, 456-57 (summarizing California and out-of-state theories of recovery for injuries arising from sexual relations with medical professionals); see also *Waters v. Bourhis*, 40 Cal. 3d 424, 434, 709 P.2d 469, 475-76, 220 Cal. Rptr. 666, 672-73 (finding an action for professional negligence and infliction of emotional distress based on medical malpractice when the plaintiff alleged a psychiatrist induced the plaintiff to engage in sexual relations as part of psychiatric therapy); see also *Cotton v. Kambly*, 300 N.W.2d 627, 628 (finding medical malpractice when defendant induced plaintiff to engage in sexual relations as part of psychiatric therapy).

3. Sexual contact is defined as the touching of an intimate part of another person. CAL. BUS. & PROF. CODE § 728(c)(2); CAL. CIV. CODE § 43.93(a)(3). See also CAL. PENAL CODE § 243.4(d) (definitions of touching and intimate part).

4. CAL. CIV. CODE § 43.93(b). See *id.* § 43.93(a)(2) (psychotherapist defined). See also CAL. CIV. CODE § 43.93(a)(1) (definition of psychotherapy). See generally Senate Task Force on Psychotherapist and Patient Sexual Relations, Report to the Senate Rules Committee (1987) (on file at *Pacific Law Journal*) (discussing the nature of the problem of psychotherapist-patient sexual relations and recommending solutions).

5. The therapeutic relationship exists while the psychotherapist renders service to the patient. CAL. CIV. CODE § 43.93(a)(4).

6. *Id.* § 43.93(b). Therapeutic deception means a representation that sexual contact with the psychotherapist is consistent with therapy. *Id.* § 43.93(a)(5). The psychotherapist is not relieved of liability if the contact occurs outside the therapy sessions. *Id.* § 43.93(c). The cause of action does not exist between spouses. *Id.* Evidence of the plaintiff's sexual history is discoverable and admissible under specified circumstances. *Id.* § 43.93(d).

7. CAL. BUS. & PROF. CODE § 728(c)(1) (psychotherapist defined).

8. *Id.* § 728(c)(4) (defines the course of prior treatment as the time between when the therapist represents that treatment may be initiated, or begins treatment, until the psychotherapist-patient relationship is ended).

of the cause of action.⁹ Failing to discuss the existence of the cause of action with the patient is unprofessional conduct.¹⁰

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9. *Id.* § 728(a). The employer of a psychotherapist to whom a patient alleges sexual contact is also required to discuss the cause of action with the patient. *Id.* During the discussion, the health care provider must supply the patient with an informational brochure. *Id.* The brochure must set forth: (1) A definition of sexual contact, (2) a description of personal reactions and histories of victims and victims' families, (3) a patient's bill of rights, (4) options for reporting the sexual relations and instructions for each reporting option, (5) a description of complaint procedures, and (6) a description of support services available for victims. *Id.* § 337(b). See generally Comment, *Psychotherapist-Patient Sex: A Proposal for a Mandatory Reporting Law*, 16 PAC. L.J. 431 (1985) (reviewing sanctions against psychotherapists and proposing mandatory reporting by psychotherapists of psychotherapist-patient sex).

10. CAL. BUS. & PROF. CODE § 728(b).

Business Associations and Professions; clubs engaging in discriminatory practices—tax deductions prohibited

Business and Professions Code § 23438 (new); Revenue and Taxation Code §§ 17269, 24343.2 (new).

AB 239 (Moore); 1987 Cal. STAT. Ch. 1463

Under the Alcoholic Beverage Control Act,¹ a club² may obtain a license³ to sell alcoholic beverages⁴ to club members and their guests.⁵ The Act specifies, however, that certain clubs are not eligible for a club license if they engage in discrimination.⁶ In addition, the De-

1. See CAL. BUS. & PROF. CODE §§ 23000-25762 (the Alcoholic Beverage Control Act).

2. See *id.* §§ 23037 (definition of club), 23429 (definition of a bona fide club). See generally *id.* §§ 23425-23429 (categorizing clubs).

3. *Id.* § 23044 (definition of license).

4. *Id.* § 23004 (definition of alcoholic beverage).

5. CAL. CONST. art. XX, § 22(d) (providing that alcoholic beverage licenses may be issued to bona fide clubs). See also CAL. BUS. & PROF. CODE §§ 23431 (clubs may serve only bona fide members and guests), 23037 (definition of guest).

6. CAL. BUS. & PROF. CODE §§ 23428.27 (tennis clubs), 23426.5 (press clubs), 23426.18 (labor councils), 23428.19 (handball or racquetball clubs), 23428.20 (nonprofit condominium and cooperative organizations), 23428.21 (local dental societies), 23428.22 (nonprofit corporations dedicated to the promotion of culture and understanding), 23428.23 (letter carriers local), 23428.24 (nonprofit social organizations), 23428.25 (Hidalgo society), 23428.26 (nonprofit property owners association). See generally Review of Selected 1977 California Legislation, 9 PAC. L.J. 281, 349 (1978) (discussing discrimination as grounds for suspension or revocation of a license).

partment of Alcoholic Beverage Control⁷ is authorized by the California Constitution to suspend or revoke a license when the licensed activity is detrimental to public welfare and morals.⁸

With the enactment of Chapter 1463, a person may not deduct club expenses⁹ for taxation purposes when the club engages in discriminatory practices.¹⁰ Chapter 1463 also requires a club to indicate on the club's receipts that expenses incurred in connection with the club are nondeductible.¹¹

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7. CAL. BUS. & PROF. CODE §§ 23049-23055 (general provisions governing the Department of Alcoholic Beverage Control (Department)).

8. CAL. CONST. art. XX, § 22(d). *See also* Elks Lodge No. 2043 v. Ingraham, 297 A.2d 607 (1972), *appeal dismissed* 410 U.S. 903 (1973) (a state law prohibiting the holder of a liquor license from discriminating on the basis of national origin, religion, or race is not an unconstitutional governmental abridgement of rights of freedom of association, or privacy, or a violation of the equal protection clause of the United States Constitution); 70 Op. Att'y Gen. 75 (1987) (discussing extent and limitations of Department's powers under the California Constitution and governing statutes to revoke private club licenses based upon discrimination). In the opinion of the Attorney General, the Department of Alcoholic Beverage Control may refuse to grant or revoke a club license when a club's discriminatory practices are contrary to public welfare and morals. *Id.* at 75-76. *See generally* The Daily Journal, April 13, 1987, at 1, col. 2 (discussing public reaction to the Attorney General opinion); *id.* April 8, 1987, at 2, col. 2 (discussing the Attorney General opinion and moves against clubs which discriminate by other public organizations).

9. CAL. BUS. & PROF. CODE § 23438(b)(1) (definition of expenses).

10. *Id.* § 23438(a); CAL. REV. & TAX. CODE § 17269(a); *id.* § 24343.2(a). Chapter 1463 does not apply to national fraternal organizations holding a club license. CAL. BUS. & PROF. CODE § 23438; CAL. REV. & TAX. CODE §§ 17269(b), 17269(c)(2), 24343.2(b), 24343.2(c)(2). *See* CAL. BUS. & PROF. CODE § 23425 (requirements for national fraternal organizations to qualify as a club). *See also* CAL. REV. & TAX. CODE § 24343 (authorizing deductions for certain business expenses). *See generally* Review of Selected 1974 California Legislation, 6 PAC. L.J. 158, 349 (1975) (discussion of discrimination as grounds for revocation or suspension of license). *See generally* Goodwin, *Challenging the Private Club*, 13 SW. U.L. REV. 237 (1982) (asserting discrimination in clubs is contrary to public policy).

11. CAL. BUS. & PROF. CODE § 23438(a); CAL. REV. & TAX. CODE § 17269(b); *id.* § 24343.2(b). Chapter 1463 does not apply to organizations operated exclusively for religious, charitable, scientific, literary or educational purposes, or to foster national or international amateur sports competition, or for the prevention of cruelty to children or animals. 1987 Cal. Stat. ch. 1463, sec. 4, at ____.