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## Business Associations and Professions

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# Business Associations and Professions

## Business Associations and Professions; assistance dogs for the disabled

Business and Professions Code § 7218 (new);  
Civil Code §§ 54.1, 54.2, 54.7 (amended).  
SB 2229 (Marks); 1988 STAT. Ch. 1595

With the enactment of Chapter 1595, the Legislature finds that assistance dogs for the disabled have a significant role in the lives of disabled persons by providing valuable assistance and increasing independence.<sup>1</sup>

Existing law allows persons licensed to train guide dogs for the blind<sup>2</sup> to take those dogs into specified public places<sup>3</sup> for the purpose of training,<sup>4</sup> and exempts them from paying an extra charge for the dog.<sup>5</sup> Chapter 1595 expands these privileges to include the training of signal dogs<sup>6</sup> for the deaf and hearing impaired and service dogs<sup>7</sup> for the physically disabled.<sup>8</sup>

Existing law provides that zoos and wild animal parks<sup>9</sup> that do not allow guide dogs to accompany blind persons must maintain free kennel facilities for the dogs.<sup>10</sup> Chapter 1595 expands existing law by

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1. CAL. BUS. & PROF. CODE § 7218(a).

2. See CAL. BUS. & PROF. CODE §§ 7200-7217 (governing the licensing, instruction, and training of guide dogs).

3. Licensed persons may take the dogs on all common carriers or public conveyances or modes of public transportation, or to telephone facilities, places of public accommodation, amusement or resort, into housing accommodations offered for rent, lease or compensation, or other places to which the general public is invited, subject to the conditions and limitations established by the law or state or federal regulation. See CAL. CIV. CODE § 54.1(a), (b).

4. *Id.* § 54.1(c) (persons licensed to train guide dogs must carry and display identification on request if such identification is issued as an authorization).

5. *Id.* § 54.2(b) (the person is liable for any damage done to the premises or facilities by the dog).

6. Signal dog means any dog trained to alert a deaf or hearing impaired person to intruders or sounds. *Id.* § 54.2(c).

7. Service dog means any dog individually trained to the physically disabled person's requirements including minimal protection work, rescue work, pulling a wheelchair, or fetching dropped items. *Id.*

8. *Id.* § 54.1(c), § 54.2(b).

9. *Id.* § 54.7(e) (definition of wild animal park).

10. *Id.* § 54.7(b).

requiring zoos and wild animal parks to provide kennel facilities for signal and service dogs which are not allowed to accompany visually handicapped, deaf, or physically disabled persons.<sup>11</sup>

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11. *Id.*

### **Business Associations and Professions; attorneys—membership fees**

Business and Professions Code §§ 6140.4, 6140.55, 6140.8, 6140.9 (new); §§ 6001, 6032, 6140, 6140.1, 6141.1, 6142, 6143 (amended). AE 4391 (Brown); 1988 STAT. Ch. 1149

Support: State Bar of California; California Judges Association; California Trial Lawyers Association; Attorney General

Opposition: Women Lawyer's Association of Los Angeles; California District Attorneys Association

Chapter 1149 provides that the State Bar has authority to raise revenue, in addition to that provided by membership fees,<sup>1</sup> by any lawful means.<sup>2</sup> Chapter 1149 further provides that the Board of

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1. The annual membership fee for 1989 is: (1) \$245 for active members who have been admitted to the practice of law in this state for three years or longer; (2) \$177 for active members who have been admitted to the practice of law in this state for less than three years but more than one year; and (3) a sum not exceeding \$146 for active members who have been admitted to the practice of law in this state for one year or less. CAL. BUS. & PROF. CODE § 6140. The annual membership fee for 1990 is: (1) \$268 for active members who have been admitted to the practice of law in this state for three years or longer; (2) \$200 for active members who have been admitted to the practice of law in this state for less than three years but more than one year; and (3) a sum not exceeding \$169 for active members who have been admitted to the practice of law in this state for one year or less. *Id.* The Board may provide by rule for payment of fees on an installment basis with interest, by credit card, or other means, and may charge members choosing any alternative method of payment an additional fee to defray costs incurred by that election. *Id.* The Board may waive, if it provides by rule, payment by any member of the annual membership fee, or penalty thereon. *Id.* § 6141.1. The Board can require submission of recent federal and state income tax returns and other proof of financial condition from members seeking waiver of their fee or penalties on the ground of financial hardship. *Id.*

Governors of the State Bar (Board) may increase the annual membership fee for discipline augmentation,<sup>3</sup> the Client Security Fund, and costs of its administration,<sup>4</sup> the support of the discipline monitor<sup>5</sup> and the independent expert studying the State Bar's affirmative action and equal employment opportunity program.<sup>6</sup>

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3. The Board may increase the annual membership fee by an additional fee for discipline enhancement of not more than \$110 per active member for 1989, 1990, and 1991. *Id.* § 6140.4(a).

4. The Board may increase the annual membership fees by an additional amount per active member not to exceed \$25 in any year, to be applied only for the purposes of the Client Security Fund and the costs of its administration. *Id.* § 6140.55.

5. The term of the State Bar Discipline Monitor terminates on January 1, 1992. *Id.* See *id.* § 6140.8 (mandatory duties of the State Bar Discipline Monitor).

6. *Id.* § 6140.9. The support of the discipline monitor and the independent expert will be paid in whole or part by a fee of \$2 per active member per year. *Id.* The State Bar must first allocate the amount payable to the monitor out of these fees. *Id.* The remaining fees must then be paid to the independent expert during the expert's term. *Id.* After the expiration of the independent expert's term the remaining fees must be applied to discipline augmentation. *Id.*

**Business Associations and Professions; directors term of office**

Corporations Code § 194.7 (new); § 301 (amended).

AB 4609 (Stirling); 1988 STAT. Ch. 495

Sponsor: Corporation Committee of the Business Law Section of the State Bar of California

Under existing law, shareholders elect corporate directors annually for a one year term.<sup>1</sup> A shorter term may be effectuated only by resignation,<sup>2</sup> declaration,<sup>3</sup> or removal.<sup>4</sup>

Chapter 495 permits the articles of incorporation to provide that directors may hold office for a term shorter than one year to effectuate a "voting shift."<sup>5</sup> Chapter 495 defines "voting shift" as a change which affects the relative rights<sup>6</sup> of a specific class or series<sup>7</sup> of shareholders in relation to the election of directors.<sup>8</sup>

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1. CAL. CORP. CODE § 301(a) (the election must be held at the annual stockholders meeting). It is generally acknowledged that the purpose of enacting section 805 of the California Corporation Code, now section 301(a), was to eliminate the system of staggered and prolonged lengthy terms of corporate directors. *See* 56 Op. Att'y Gen. 317, 318 (1973). An annual election of the entire board of directors is required. *See* Arden-Mayfair, Inc. v. Louart Corp., 434 F.Supp. 580, 581 (D. Del. 1977). Staggered elections are forbidden to permit shareholders the opportunity to elect new directors annually when the shareholders disagree with the directors' performance but do not consider that performance serious enough to warrant removal. Halloran & Hammer, *Section 2115 of the New California General Corporation Law—the Application of California Corporation Law to Foreign Corporations*, 23 U.C.L.A. L.REV. 1282, 1298-99 n.32 (1975-76).

2. CAL. CORP. CODE § 305(d) (filling of vacancies due to resignations).

3. *Id.* § 302 (the board may declare the director's position vacant if convicted of a felony or declared of unsound mind).

4. *Id.* §§ 303 (removal of directors without cause), 304 (removal of directors for cause).

5. *Id.* §301(a).

6. *Id.* § 400 (rights, preferences, privileges, and restrictions given to a specific class or series of shares in relation to voting). *See generally id.* § 194.5 (definition and rights of voting power).

7. *Id.* § 183 (definition of series).

8. *Id.* § 194.7.

## **Business Associations and Professions; discipline of attorneys**

Business and Professions Code §§ 6079, 6086.6 (repealed); §§ 6044.5, 6079.1, 6081.1, 6086.2, 6086.12, 6086.65, 6090.6, 6091.1, 6091.2, 6132, 6133, 6140.35 (new); §§ 6007, 6046, 6046.5, 6049, 6054, 6068, 6084, 6086.5, 6086.7, 6086.8, 6086.9, 6086.11, 6087, 6093, 6094.5, 6106.5, 6126, 6140.5, 6180.4, 6180.5, 6180.6 (amended); Code of Civil Procedure § 2018 (amended).  
SB 1498 (Presley); 1988 STAT. Ch. 1159

### I. DETECTION OF CONDUCT SUBJECT TO DISCIPLINE

#### A. Notification Requirements

Chapter 1159 provides that the State Bar of California (State Bar) must disclose information not otherwise public to the appropriate prosecuting authority if a disciplinary investigation concerns certain attorney misconduct.<sup>1</sup> Chapter 1159 also provides that the attorney's failure to report<sup>2</sup> certain disciplinary actions<sup>3</sup> against him may serve as a basis for discipline.<sup>4</sup> If, in the court's opinion, a contempt holding imposed against an attorney involves grounds warranting discipline, Chapter 1159 permits the court entering the final order of contempt to transmit to the State Bar a copy of the relevant minutes, final order, and transcript, if one exists.<sup>5</sup>

Under existing law, a court rendering a judgment that a member of the State Bar is civilly liable for fraud, misrepresentation, breach of fiduciary duty, or gross negligence committed in a professional capacity is required to report<sup>6</sup> the judgment to the State Bar.<sup>7</sup> Chapter 1159 expands existing law further by requiring any admitted insurer or licensed surplus broker, who provides professional liability insurance to the legal profession, to report to the State Bar every claim

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1. This misconduct includes: (1) Conduct that may subject a member to criminal prosecution for any felony, or any lesser crime committed during the course of the practice of law; (2) conduct of which the client of the member was a victim; or (3) conduct which may subject the member to disciplinary charges in another jurisdiction. CAL. BUS. & PROF. CODE § 6044.5.

2. The attorney must report to the agency charged with attorney discipline, in writing, within 30 days of the time the attorney has knowledge of a disciplinary action. *Id.* § 6068(o).

3. *See id.* § 6068(o)(1)-(7) (list of disciplinary actions to be reported).

4. *Id.* § 6068(o)(10).

5. *Id.* § 6086.7.

6. The court must make the report in writing and within twenty days after judgment was entered. *Id.* § 6086.8(a).

7. *Id.* § 6086.8(a).

or action for damages against a member of the State Bar for fraud, misrepresentation, breach of fiduciary duty, or negligence committed in a professional capacity.<sup>8</sup>

With the enactment of Chapter 1159, financial institutions<sup>9</sup> must report to the State Bar any attorney trust fund account containing insufficient funds.<sup>10</sup> Chapter 1159 provides that every attorney practicing or admitted to practice in this state is conclusively deemed to have consented to these trust fund reporting and production requirements as a condition of practicing or being admitted to practice.<sup>11</sup>

### *B. Fingerprinting Requirements*

Existing law requires an applicant for admission or reinstatement to the State Bar be fingerprinted, in order to establish the identity of the applicant and determine whether the applicant has a record of criminal conviction.<sup>12</sup> Chapter 1159 permits the State Bar to require the fingerprinting as a condition of disciplinary probation or under an agreement in lieu of a disciplinary prosecution.<sup>13</sup>

## II. PROCEDURE FOR DISCIPLINARY PROCEEDINGS

### *A. Deadlines and Subpoena Power*

Under existing law, the goals and policies of the disciplinary

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8. *Id.* § 6086.8(b). The insurer must report to the State Bar within thirty days of receipt of a claim or action for damages. *Id.*

9. *Id.* § 6091.2(a) (definition of financial institution).

10. *Id.* § 6091.1(a). The legislature believes that overdrafts and misappropriations from attorney trust accounts are serious problems. *Id.* The Legislature further finds that it is in the public interest to ensure prompt detection and investigation of instances involving overdrafts and misappropriations from attorney trust accounts. *Id.* Financial institutions must make reports in the following format: (1) In the case of a dishonored instrument, the report must be identical to the overdraft notice customarily forwarded to the depositor, and must include a copy of the dishonored instrument, if such a copy is normally provided to depositors; (2) in the case of instruments that are presented against insufficient funds, and are honored, the report must identify the financial institution presented with the instrument, the attorney or law firm, the account number, the date of presentation for payment, the date paid, and the amount of overdraft created thereby. *Id.* § 6091.1(b). Reports regarding instruments honored against insufficient funds must be made simultaneously with, and within the time provided by law for any notice of dishonor. *Id.* If an instrument presented against insufficient funds is honored, then the report must be made within five banking days of the date of presentation for payment against insufficient funds. *Id.*

11. *Id.* § 6091.1(c).

12. *Id.* § 6054.

13. *Id.* Chapter 1159 provides that the State Bar will retain these fingerprint records for the limited purpose of criminal arrest notification. *Id.* Chapter 1159 further provides that the State Bar must destroy fingerprint records of an applicant denied admission to the State Bar within one year of the decision not to admit the applicant. *Id.*

agency<sup>14</sup> are to dismiss a complaint, admonish the attorney, or forward a completed investigation to the Office of Trial Counsel within six months after receipt of a written complaint.<sup>15</sup> Under Chapter 1159, the agency's goal for complaints designated as complicated matters by the Chief Trial Counsel is to dismiss a complaint, admonish the attorney, or forward a completed investigation to the Office of Trial Counsel within twelve months.<sup>16</sup> Chapter 1159 allows each party, in all formal proceedings conducted by the appropriate agency responsible for criminal or disciplinary enforcement, to compel, by subpoena, the attendance of witnesses and the production of books, papers, and documents pertaining to the proceeding.<sup>17</sup>

### *B. Decision and Review*

Chapter 1159 declares that a decision or order of the State Bar Court is final and enforceable for all purposes when no petition to review, reverse, or modify has been filed by either party within the time allowed, or when such a petition has been denied.<sup>18</sup> A member may be held in contempt of court under Chapter 1159 for willful failure to comply with a disciplinary order, or an order or part of an order of the California supreme court.<sup>19</sup>

Under Chapter 1159, the Board of Governors of the State Bar (Board) may fix a date on which all proceedings pending before the Review Department judges<sup>20</sup> must be decided.<sup>21</sup> Chapter 1159 further

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14. The disciplinary agency is the agency charged with the discipline of attorneys for professional misconduct. *Id.* § 6090.

15. *Id.* § 6094.5(a).

16. *Id.*

17. *Id.* § 6049(c).

18. *Id.* § 6084(a). Chapter 1159 requires the California supreme court to make such orders as it may deem proper in the circumstances in any case in which a petition to review, reverse, or modify is filed by either party. *Id.* § 6084(a). This subdivision does not abrogate the supreme court's authority, on its own motion, to review *de novo* the decision or order of the State Bar Court. *Id.*

19. *Id.* § 6084(d). The State Bar may bring a contempt action in any of the following courts: (1) The Los Angeles or San Francisco Superior Court; (2) the superior court of the county of the member's address as shown on current State Bar membership records; (3) the superior court of the county where the act or acts occurred; or (4) the superior court of the county in which the member's regular business address is located. *Id.*

20. The Review Department consists of the Presiding Judge of the State Bar Court, one lay judge, and one Review Department judge. *Id.* § 6086.65(a). The judges of the Review Department, who must be nominated, appointed, and subjected to discipline as provided by the Business and Professions Code section 6079.1(a), will be qualified as provided by section 6079.1(b) of the Business and Professions Code, and will be compensated as provided for the Presiding Judge by section 6079.1(d) of the Business and Professions Code. *Id.* The lay judge, a person who has never been a member of the State Bar or admitted to practice law before any court in the United States, and the Review Department judge may be appointed to positions occupying one-half the time and pay of the Presiding Judge. *Id.*

21. *Id.* § 6086.65(b).



provides that a decision or order issued by a State Bar Court judge may be reviewed only upon timely request of a party to the proceeding.<sup>22</sup>

### *C. Records*

Chapter 1159 requires the State Bar to make all records pertaining to admissions, membership, and administration of the program authorized by Article 14 of the State Bar Act available to the Office of Trial Counsel and the Office of Investigations for use in the investigation and prosecution of complaints against members of the State Bar.<sup>23</sup> Chapter 1159 also provides that in a disciplinary proceeding, the State Bar shall have access, on an ex parte basis, to all nonpublic court records relevant to the competence or performance of its members, provided these records remain confidential.<sup>24</sup> Chapter 1159 permits the State Bar to disclose publicly the nature and content of these records after notice of intention to disclose the records has been given to the parties in the underlying action.<sup>25</sup> Chapter 1159 further permits a party to the underlying action, who would be adversely affected by the disclosure, to serve notice on the State Bar that the party opposes the disclosure and will seek a hearing in a court of competent jurisdiction on an expedited basis.<sup>26</sup> The State Bar, under Chapter 1159, is empowered to discover the work product of an attorney against whom disciplinary charges are pending when the work product is relevant to issues of breach of duty by the attorney.<sup>27</sup>

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22. *Id.* § 6086.65(d). Even though the decision or order is reviewable by the Review Department, it may not be heard on the Department's own motion. *Id.*

23. *Id.* § 6086.2.

24. *Id.* § 6090.6. This access is for investigation and enforcement purposes and may be limited only by a court order sealing the records pursuant to Penal Code sections 851.6, 851.7, 851.8 or 851.85. *Id.* The Penal Code sections refer to sealing records in the following circumstances: (1) Release of person arrested without warrant; (2) minor arrested for misdemeanor; (3) person arrested with no accusatory pleading filed; and (4) person acquitted of a charge when it appears to the judge that the defendant was factually innocent of the charge. CAL. PENAL CODE §§ 851.6-851.85.

25. CAL. BUS. & PROF. CODE § 6090.6.

26. *Id.* The party to the underlying action must serve notice on the State Bar within ten days of receipt of the State Bar's notice of intention to disclose the records. *Id.*

27. CAL. CIV. PROC. CODE § 2018(e). This power is subject to applicable client approval and a protective order. *Id.* The requisite client approval is deemed to have been granted whenever a client has initiated a complaint against an attorney. *Id.*

III. PENALTIES FOR ATTORNEY MISCONDUCT

A. *Inactive Enrollment*

Existing law provides for the inactive enrollment of members for specified reasons.<sup>28</sup> Under Chapter 1159, the Board can base involuntary inactive enrollment of a member on a finding of substantial threat of harm to the interests of the attorney's clients or the public.<sup>29</sup> The Board must find that: (1) The attorney has caused substantial harm to clients or the public; (2) the attorney's clients or the public are likely to suffer greater injury from the denial of involuntary inactive enrollment than the attorney is likely to suffer if it is granted, or there is a reasonable likelihood that the harm will reoccur or continue;<sup>30</sup> and (3) there is a reasonable probability that the State Bar will prevail on the merits of the underlying disciplinary matter.<sup>31</sup>

Chapter 1159 further provides for involuntary inactive enrollment of a member for failure to file an answer to a notice of disciplinary proceedings if: (1) The notice was duly served;<sup>32</sup> (2) the notice contained a specified warning;<sup>33</sup> and (3) a warning letter was sent to the member after the time to answer had passed and the member did not file an answer within fifteen days after the letter was served.<sup>34</sup> The Board is required under Chapter 1159 to terminate the inactive enrollment when an answer to the notice is filed on behalf of the member, or when a proposed answer is filed with a request to set aside the member's default.<sup>35</sup>

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28. CAL. BUS. & PROF. CODE § 6007(b) (specifies reasons for inactive enrollment of members).

29. *Id.* § 6007(c)(1).

30. *Id.* § 6007(c)(2)(B). When the evidence establishes a pattern of behavior, including acts likely to cause substantial harm, the burden of proof shifts to the attorney to show that there is no reasonable likelihood that the harm will reoccur or continue. *Id.*

31. *Id.* § 6007(c)(2). *See id.* § 6007(c)(2)(C). The filing of a recommendation of disbarment after hearing or default creates a rebuttable presumption that the factors, upon which a finding of substantial threat of harm must be based, are established. *Id.* § 6007(c)(4). The presumption is one affecting the burden of proof as defined in section 605 of the Evidence Code. *Id.* The underlying matter must proceed in an expedited fashion when the inactive enrollment is based upon substantial threat of harm. *Id.* § 6007(c)(3).

32. This notice must be served pursuant to section 6002.1(c) of the Business and Professions Code. *Id.* § 6007(e)(1)(A).

33. *See id.* § 6007(e)(1)(B) (sets forth the required warning).

34. *Id.* § 6007(e)(1). Upon the involuntary inactive enrollment of a member under this subdivision, the disciplinary agency must promptly give the notice required by section 6092.5(b) of the Business and Professions Code. *Id.* § 6007(e)(4).

35. *Id.* § 6007(e)(2). The enrollment and termination under this subdivision are administrative in character and no hearing is required. *Id.* § 6007(e)(3). The Board can delegate its authority under this subdivision to the presiding referee or presiding judge of the State Bar Court or his or her designee. *Id.* § 6007(e)(5). The Board also can order interim remedies

*B. Probation*

Whenever the State Bar Court or the Office of Trial Counsel imposes probation, with the agreement of the member, Chapter 1159 provides that any conditions may be imposed which will reasonably serve the purposes of probation.<sup>36</sup> Under Chapter 1159, violation of a condition of probation constitutes cause for revocation of any probation pending and cause for discipline.<sup>37</sup>

Under Chapter 1159, any person advertising or claiming to practice or be entitled to practice law, who is not an active member of the State Bar, is guilty of a misdemeanor.<sup>38</sup> Chapter 1159 further provides that any person who: (1) Has been involuntarily enrolled as an inactive member of the State Bar, (2) has been suspended from membership, (3) has been disbarred, or (4) has resigned with charges pending, and thereafter advertises or claims to practice or be entitled to practice law, is guilty of a crime punishable by imprisonment in the state prison or the county jail.<sup>39</sup> The willful failure of a member of the State Bar, or one who has resigned or been disbarred, to comply with an order of the California supreme court to comply with Rule 955, constitutes a crime punishable by imprisonment in the state prison or county jail.<sup>40</sup>

IV. PROTECTION OF CLIENTS' INTERESTS

*A. Client Security Fund*

Chapter 1159 requires the Board to establish a Client Security Fund.<sup>41</sup> Under Chapter 1159, the Board is subrogated, to the extent of the payment from the fund, to the rights of the applicant against the person or entity that caused the pecuniary loss.<sup>42</sup> Chapter 1159

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short of involuntary inactive enrollment. *Id.* § 6007(h). These remedies may include restrictions as to scope of practice, monetary accounting procedures, review of performance by probation, or other monitors appointed by the Board. *Id.*

36. *Id.* § 6093(a).

37. *Id.* § 6093(b). The proceedings on an allegation of a probation violation must be expedited by the State Bar Court or the Office of Trial Counsel. *Id.* § 6093(c). The standard of proof in the proceedings is the preponderance of the evidence. *Id.*

38. *Id.* § 6126(a).

39. *Id.* § 6126(b).

40. *Id.* § 6126(c). See generally CAL. PROF. RULES (West's Ann. Cal. 23, Pt. 2) Rule 955 (describing duties of disbarred, resigned, and suspended attorneys).

41. *Id.* § 6140.5(a). The Client Security Fund is to relieve or mitigate pecuniary losses caused by dishonest conduct of active members of the State Bar while practicing law. *Id.*

42. *Id.* § 6140.5(b) (providing for a three-year statute of limitations for the Board to bring an action to recover against the offending attorney).

requires the attorney to reimburse the fund as a condition of continued practice.<sup>43</sup>

*B. Jurisdiction Over Attorney's Legal Practice*

Under existing law, a court may assume jurisdiction over an attorney's practice in certain specified circumstances.<sup>44</sup> Existing law empowers the court to appoint one or more active members of the State Bar to act under its direction and may order such appointed attorneys to do specified activities.<sup>45</sup> Under Chapter 1159, the appointed attorneys can be ordered to give notice to the depositor;<sup>46</sup> and to arrange for the appointment of a receiver, where applicable to take possession and control of any and all bank accounts relating to the affected attorney's practice of law, including the general or office account and the clients' trust account.<sup>47</sup>

*C. Firm Name and Correspondence*

Chapter 1159 requires the name of an attorney, who was disbarred or resigned with charges pending, be removed from the name of any

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43. *Id.* § 6140.5(c) (attorney must reimburse all moneys paid out of the fund with interest and processing costs).

44. *Id.* § 6180.5. These circumstances include when the court finds that one or more of the events stated in Business and Professions Code section 6180 has occurred, and (1) supervision by the court is warranted because the affected attorney has left an unfinished client matter for which no other active member of the State Bar has, with the client's consent, agreed to assume responsibility or (2) the interest of one or more of the clients of the attorney, or one or more other interested persons or entities will be prejudiced if the proceeding is not maintained. *Id.* Existing law permits the superior court on its own motion, a client of the attorney, the State Bar, or an interested person or entity to make an application to the superior court for the court to assume jurisdiction over a law practice. *Id.* § 6180.2.

45. *Id.* § 6180.5. Existing law provides that the appointed attorneys can be ordered to: (1) Examine the files and records of the law practice and obtain information as to any pending matters which may require attention; (2) notify persons and entities who appear to be clients of the attorney of the occurrence of the event or events stated in Section 6180 of the Business and Professions Code and inform them that it may be to their best interest to obtain other legal counsel; (3) apply for an extension of time, pending employment of such other counsel by the client; (4) with the consent of the client, file notices, motions, and pleadings on behalf of the client where jurisdictional time limits are involved and other legal counsel has not yet been obtained; and (5) arrange for the surrender or delivery of clients' papers or property. *Id.*

46. *Id.* § 6180.5(e). Chapter 1159 states that service of the application is complete at the time of mailing, but any prescribed period of notice, and any right or duty to do any act or make any response within that prescribed period or on a date certain after notice is served by mail will be extended five days if the place of address is within the State of California, ten days if the address is outside the State of California but within the United States, and twenty days if the place of address is outside the United States. *Id.* § 6180.4.

47. *Id.* § 6180.5(g).

law firm, partnership, corporation, or association.<sup>48</sup> Furthermore, the attorney's name must be removed from all signs, advertisements, letterhead, and other materials used by the entity.<sup>49</sup>

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48. The name of the attorney must be removed within sixty days of the disbarment or resignation. *Id.* § 6132.

49. *Id.*

### **Business Associations and Professions; diversion programs for osteopathic physicians and surgeons**

Business and Profession Code §§ 2360, 2361, 2362, 2363, 2364, 2365, 2366, 2367, 2368, 2369, 2370 (new).

AB 4197 (Isenberg); 1988 STAT. Ch. 384

Sponsor: Osteopathic Physicians and Surgeons of California

Support: Board of Osteopathic Examiners; College of Osteopathic Medicine of the Pacific

Existing law provides for diversion programs<sup>1</sup> for podiatrists,<sup>2</sup> pharmacists,<sup>3</sup> and physicians.<sup>4</sup> Chapter 384 establishes a comprehensive diversion program for osteopathic physicians and surgeons<sup>5</sup> as an alternative to traditional<sup>6</sup> disciplinary actions for drug and alcohol abuse.<sup>7</sup> Chapter 384 mandates that the Board of Osteopathic Examiners (Board) administer the programs;<sup>8</sup> create evaluation committees;<sup>9</sup> and establish criteria for acceptance, denial, and termination

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1. CAL. BUS. & PROF. CODE § 2361(b) (definition of diversion program).

2. *Id.* § 2497.1 (podiatrist rehabilitation and diversion program).

3. *Id.* §§ 4425-4439 (impaired pharmacist program).

4. *Id.* §§ 2340-2356 (impaired physician diversion program).

5. *Id.* § 4033 (definition of osteopathic physician and surgeon).

6. *See id.* § 2239(a) (declares physician misuse of dangerous drugs, controlled substances, or alcohol as unprofessional conduct). *See generally id.* § 2227 (mode of discipline after finding of guilt).

7. *Id.* §§ 2360-2370. The purpose of Chapter 384 is to provide an alternative approach to traditional disciplinary measures so that osteopathic physicians and surgeons whose competency may be impaired by drug and alcohol abuse may be identified, treated, and returned to the practice of medicine without endangering the public safety. *Id.* § 2360. The Board is not limited to ordering participation in the diversion program, but it may also order any other disciplinary action. *Id.* § 2367(b). *See also id.* § 492 (penalties in addition to diversion programs).

8. *Id.* § 2364.

9. Each committee has the following responsibilities: (1) Evaluate licensees who request participation in the program; (2) review treatment facilities and services; (3) review information concerning participants in the program; (4) consider whether a participant may safely resume or continue the practice of medicine; (5) prepare quarterly reports which evaluate the costs of

of participants<sup>10</sup> in the programs.<sup>11</sup> Chapter 384 also affords certain confidential treatment to records pertaining to a participant's treatment.<sup>12</sup>

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the program and the number of cases accepted, denied, or terminated with compliance or non-compliance; (6) promote the program to the public and the profession; and (7) perform such other duties as the Board requires. *Id.* § 2366(a)-(g).

10. *Id.* § 2361(d) (definition of participant).

11. *Id.* §§ 2362, 2364, 2365. See generally CAL. CODE REGS. § 1357.5 (causes for termination of participation in the program for physicians).

12. CAL. BUS. & PROF. CODE § 2369(b). Records pertaining to the treatment of a participant are confidential and not subject to discovery or subpoena except in criminal proceedings. *Id.* § 2369(b). When a committee determines that a participant is rehabilitated and the program is completed, the committee must purge all records pertaining to participation in the program. *Id.* § 2369(a).

## **Business Associations and Professions; foreign corporations— certification of securities; corporations—supermajority vote requirements**

Corporation Code § 710 (new); 2115 (amended).

SB 2001 (Keene); 1988 STAT. Ch. 1288

Support: Secretary of State; Attorney General's Office; Senate  
Committee on Corporations and Governments

Existing law subjects a foreign corporation<sup>1</sup> to specified provisions of the California Corporation Code<sup>2</sup> if two tests are met: (1) The corporation has more than one-half of its outstanding voting securities<sup>3</sup>

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1. CAL. CORP. CODE § 171 (definition of foreign corporation).

2. See *id.* §§ 301 (annual elections of directors), 303 (removal of directors without cause), 304 (removal of directors by court proceedings), 305 (filling of director vacancies where less than a majority in office elected by shareholders), 309 (directors standard of care), 316 (liability of directors for unlawful distributions), 317 (indemnification of director, officers and others), 500-505 (limitations on corporate distributions in cash or property), 506 (liability of shareholder who receives unlawful distributions), 600 (requirement for annual shareholders meetings), 708 (shareholders rights to cumulate votes at any election of directors), 1001 (limitations on sales of assets), 1101 (limitations on mergers), 1200, 1201 (reorganizations), 1300-1312 (dissenters' rights), 1500, 1501 (records and reports), 1508 (action by Attorney General), 1600-1605 (rights of inspection). *Id.* § 2115(b).

3. If securities are held in the name of broker-dealers or nominees for broker-dealers, including clearing corporations, the securities are not considered outstanding for purposes of the one-half of voting securities test. *Id.* § 2115(a). At the request of the foreign corporation, the broker-dealer must certify the number of securities held for beneficial owners with addresses within and without California. *Id.* All securities that are certified are considered outstanding for purposes of applying the one-half of voting securities test. *Id.* See *id.* § 25004 (definition of broker-dealer).

held of record<sup>4</sup> by persons having addresses in California, and (2) the average of the California property, payroll, and sales factors<sup>5</sup> is in excess of fifty percent.<sup>6</sup>

Chapter 1288 creates the term Nominee Holders<sup>7</sup> and subjects all Nominee Holders to the same provisions as broker-dealers under existing law.<sup>8</sup> Chapter 1288 further provides that compliance with Securities and Exchange Commission requirements<sup>9</sup> constitutes an acceptable certification of beneficial owners for the one-half of voting shares test.<sup>10</sup> The changes made by Chapter 1288 are consistent with Securities and Exchange Commission Rules<sup>11</sup> and eliminate potential confusion where non broker-dealers hold securities for the benefit of others.<sup>12</sup>

Chapter 1288 requires a corporation that adds a supermajority vote<sup>13</sup> requirement to the articles of incorporation or any certificate of determination to have the supermajority vote requirement ap-

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4. CAL. CORP. CODE § 605 (definition of held of record).

5. CAL. REV. & TAX. CODE §§ 25129 (property factor), 25132 (payroll factor), 25134 (sales factor).

6. CAL. CORP. CODE § 2115(a). These provisions are not applied to corporations with outstanding securities listed on a national exchange or those qualified to be traded on the National Association of Securities Dealers Automatic Quotation System. *Id.* § 2115(e). *But see id.* § 2115(a) (securities held of record by a California addressee, who places the securities in trust with a trustee not having a California address, are not considered outstanding for purposes of the one-half of voting securities test.). *See generally* Halloran & Hammer, *Section 2115 of the New California General Corporation Law—the Application of California Corporation Law to Foreign Corporations*, 23 U.C.L.A. L. REV. 1282 (1976). Several commentators have questioned the constitutionality of California Corporation Code section 2115. *See* Buxbaum, *The Threatened Constitutionalization of the Internal Affairs Doctrine in Corporation Law*, 75 CALIF. L. REV. 29, 38-40 (1987) (discussing information requirements for corporations where a substantial number of shareholders are residents of the forum asserting prescriptive jurisdiction); *Report of the Committee on Corporations Regarding Legal Opinions in Business Transactions*, 14 PAC. L.J. 1001, 1056-1057 (1983) (discussing the uncertain applicability of California Corporation Code section 2115); *Review of Selected 1975 California Legislation*, 7 PAC. L.J. 258, 271, 273 (1976) (business associations and professions; general corporation law). *See also* *Wilson v. Louisiana Pacific Resources, Inc.*, 138 Cal. App. 3d 216, 187 Cal. Rptr. 852 (1982) (holding that there was no constitutional obstacle to enforcing the provisions of California Corporation Code section 2115).

7. CAL. CORP. CODE § 2115(a) (defined as broker-dealers, nominees of broker-dealers, clearing corporations, banks, associations, or other entities holding securities on behalf of the beneficial owner).

8. *Id.*

9. *See* 17 C.F.R. 240.14b-1(c) or 17 C.F.R. 240.14b-2(e) (1988).

10. CAL. CORP. CODE § 2115(a).

11. *See* 17 C.F.R. 240.14b-1(c) or 17 C.F.R. 240.14b-2(e) (1988).

12. *See* Halloran & Hammer, 23 U.C.L.A. L. REV. at 1286.

13. A supermajority vote is a requirement set forth in articles of incorporation or a certificate of determination that specific corporate actions be approved by a larger proportion of the outstanding shares than a majority. CAL. CORP. CODE § 710(b). *See also id.* § 204(a)(5) (a requirement for the vote of a proportion of shares larger than a majority may be included in articles of incorporation).

proved by at least the same supermajority vote of shareholders.<sup>14</sup> Under Chapter 1288 the supermajority voting percentage required can not exceed two-thirds of outstanding shares.<sup>15</sup> Additionally, a supermajority vote requirement will remain in effect for no more than two years, unless renewed by a new vote of the supermajority number of shares.<sup>16</sup>

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14. CAL. CORP. CODE § 710(b).

15. *Id.* § 710(c).

16. *Id.* Chapter 1288 only applies to corporations with outstanding shares held of record by 100 or more persons that files an amendment of articles or certificate of determination containing a supermajority vote provision on or after January 1, 1989. *Id.* § 710(a). *See id.* § 605 (shares deemed held of record). Chapter 1288 also applies to otherwise qualified foreign corporations that meet the two part test provided in Corporation Code section 2115. *Id.* § 2115(b).

## **Business Associations and Professions; corporate reorganizations**

Corporations Code § 1203 (repealed and new).

SB 2552 (Keene); 1988 STAT. Ch. 265

*(Effective July 5, 1988)*

Sponsor: Senate Committee on Corporations and Government

Support: State Teachers Retirement System

Under prior law, a proposal for a corporate reorganization made by a party who controls that corporation required an accompanying report attesting that the proposal was reasonable as to the shareholders.<sup>1</sup> Chapter 265 attempts to reconcile prior law with well established procedures in the financial community and to facilitate the implementation of regulations governing corporate reorganizations, sales of assets, and tender offers.<sup>2</sup> Under Chapter 265, an affirmative opinion<sup>3</sup> as to the fairness of any tender offer or any

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1. 1987 Cal. Stat. ch. 627, sec. 2, at \_\_\_\_ (enacting CAL. CORP. CODE § 1203).

2. 1988 Cal. Stat. ch. 265, sec. 3, at \_\_\_\_.

3. The opinion must be provided by a person who is not affiliated with the offeror and who, for compensation, engages in the business of advising others as to the value of properties, businesses, or securities. CAL. CORP. CODE § 1203(a). The fact that the person previously has provided services to the offeror or a related entity or is simultaneously engaged in providing advice or assistance with respect to the proposed transaction does not deem the person to be affiliated with the offeror. *Id.*



proposal for approval of a reorganization<sup>4</sup> or sale of assets<sup>5</sup> made to a corporation's shareholders<sup>6</sup> by an interested party<sup>7</sup> must be delivered to specified persons.<sup>8</sup>

Chapter 265 requires a subsequent offeror to inform the shareholders if a later proposal<sup>9</sup> is made while a tender of shares or a vote or written consent is being sought pursuant to an Interested Party Proposal.<sup>10</sup> Chapter 265 further requires that, in the event a later proposal is made, shareholders be given a reasonable time<sup>11</sup> to withdraw any vote, consent, or proxy before it becomes effective, or to withdraw any tendered shares before the shares are purchased.<sup>12</sup>

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4. See *id.* §§ 181 (definition of reorganization), 1200 (requirements for approval of a reorganization).

5. See *id.* § 1001 (describing when a corporation may sell its assets). The tender offer or written proposal is hereinafter referred to as an "Interested Party Proposal." *Id.* § 1203(a).

6. See *id.* § 1203(a) (applies if made to some or all of a corporation's shareholders).

7. Interested party means a person who is a party to the transaction and: (1) "Directly or indirectly controls the corporation that is the subject of the tender offer or proposal; (2) is directly or indirectly controlled by an officer or director of the subject corporation; or, (3) is an entity in which a material interest is held by any director or executive officer of the subject corporation." *Id.* § 1203(a)(5). Chapter 265 does not apply to an Interested Party Proposal if the subject corporation does not have shares held of record by 100 or more persons or if the transaction has been qualified under Civil Code sections 25113 or 25120 and where no order under Civil Code sections 25140 or 25143 is in effect. *Id.*

8. *Id.* 1203(a). The opinion must be delivered as follows: (1) To the corporation's board of directors no later than the time that consummation of the transaction is authorized and approved by the board of directors if no shareholder approval or acceptance is required for the consummation of the transaction; (2) to the shareholders at the time that the tender offer is first made in writing to the shareholders if a tender offer is made to the corporation's shareholders; (3) to the shareholders with the notice of a shareholder's meeting if a meeting is to be held to vote on approval of the transaction; (4) with any shareholder consent solicitations if all shareholders entitled to vote are solicited in writing; and (5) to each shareholder whose consent is solicited prior to that shareholder's consent being given, and to all other shareholders at the time they are given the notice if the consents of all shareholders are not solicited in writing. *Id.* § 1203(a) (1)-(5).

9. Later proposal refers to a tender offer or written proposal for a reorganization or sale of assets that would require a vote or written consent of shareholders. *Id.* § 1203(b)(2).

10. *Id.* § 1203(b)(1) (any written material provided by the later offeror must be forwarded to the shareholders at the offeror's expense). This provision applies to later proposals made at least ten days prior to the date for acceptance of the tendered shares or the vote or notice of shareholder approval. *Id.* § 1203(b)(2).

11. A delay of 10 days from the notice or publication of the later proposal will be deemed to provide a reasonable time to effect the withdrawal. *Id.*

12. *Id.*

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

Financial Code §§ 3771, 3772, 3773, 3774, 3776, 3779 (amended); § 3775 (repealed and new).  
SB 728 (Robbins); 1988 STAT. Ch. 1253

Chapter 1253 revises various provisions of the California Interstate (Regional) Banking Act of 1976.<sup>1</sup> Under Chapter 1253 the definition of bank holding company includes any foreign bank;<sup>2</sup> California bank holding company means a bank holding company with principal operations conducted within California.<sup>3</sup> Under Chapter 1253, individuals are not included in the definition of company.<sup>4</sup> Chapter 1253 states that a foreign (other nation) bank that has chosen a state other than California as its home state, or that has its principal operations in a state other than California, will be considered a foreign (other state) bank holding company.<sup>5</sup>

Chapter 1253 provides that, when determining whether a company is in control of another and thus is a bank holding company the following circumstances do not constitute control: (1) A company acquires shares of another company in a fiduciary capacity;<sup>6</sup> (2) a company acquires shares of another company in connection with the acquiring company's underwriting of securities;<sup>7</sup> (3) a company formed for the sole purpose of participating in a proxy solicitation acquires voting rights of shares of another company in the course of the

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1. CAL. FIN. CODE §§ 3770-3781 (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 (discussing the Robbins-Vuich-Calderon Financial Institutions Act of 1986 which embodies the Interstate (Regional) Banking Act of 1986 and the Interstate (National) Banking Act of 1986). The Interstate (National) Banking Act of 1986 becomes operative January 1, 1991. CAL. FIN. CODE §§ 3750-3761.

2. CAL. FIN. CODE § 3771(a). See also *id.* § 3771(i) (referring to Financial Code § 1700 for the definition of foreign bank).

3. *Id.* § 3771(d). Chapter 1253 deletes from the definition of California bank holding company the requirement that a bank holding company must maintain its head office in California. *Id.*

4. *Id.* § 3771(e). Existing law defines company as any person, bank, corporation, trust company, partnership, trust, association, or similar organization. *Id.*

5. *Id.* § 3772.

6. *Id.* §§ 3772(e)(1), 3775(a)(1). However, if the acquiring company has some discretionary authority to exercise its voting rights with respect to the shares, or if the shares are controlled directly or indirectly by trustees for the benefit of a company, the shareholders or members of a company, or the employees of a company, the shares will be deemed controlled by the company. *Id.*

7. *Id.* § 3772(e)(2) (provided that the acquiring company holds the shares only until the shares can be sold on a reasonable basis).

solicitation;<sup>8</sup> (4) a company acquires shares of another company in the regular course of securing or collecting a debt previously contracted in good faith;<sup>9</sup> (5) a merger or consolidation of one California bank with another California bank;<sup>10</sup> and (6) a merger of a foreign bank holding company with a California bank or bank holding company, provided that the California bank or bank holding company is the surviving entity.<sup>11</sup>

After the enactment of Chapter 1253, a foreign bank can acquire more than 50 percent of the assets of a California bank or bank holding company, but the bank may not assume any deposits or acquire substantially all of the assets of a California bank or bank holding company.<sup>12</sup> Finally, Chapter 1253 authorizes the Superintendent of Banks to provide other state and federal regulatory agencies information relating to any California bank or bank holding company that controls or is proposing to acquire control of a foreign bank.<sup>13</sup>

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8. *Id.* § 3772(e)(3).

9. *Id.* §§ 3772(e)(4), 3775(a)(2) (provided that the acquiring company dispose of the shares within two years unless an extension is approved by the Superintendent of Banks).

10. *Id.* § 3775(b).

11. *Id.* § 3775(c), (c)(1). Furthermore, the transaction must not result in any change of control of the California bank or bank holding company, and the owners of shares of the California bank or bank holding company before the merger must own at least a majority of shares after the merger. *Id.* § 3775(c)(2), (3). With these changes, Chapter 1253 reconciles a listing of authorized actions of bank holding companies in the western region with a listing of prohibited actions of foreign bank holding companies. *Compare id.* § 3773 with *id.* § 3774.

12. CAL. FIN. CODE § 3774(d).

13. *Id.* § 3779.

## **Business Associations and Professions; franchise investment law**

Corporations Code § 31008.5 (new); §§ 31008, 31009, 31010, 31100, 31101, 31112, 31114, 31117, 31119, 31125 (amended).  
AB 3366 (Johnston); 1988 STAT. Ch. 562

Existing law provides for the regulation of franchises.<sup>1</sup> Under

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1. CAL. CORP. CODE §§ 31000-31516 (the Franchise Investment Law), *id.* § 31005 (definition of franchise).

Chapter 562 a franchisor<sup>2</sup> must provide to the franchisee<sup>3</sup> written disclosure of any material modification to an existing franchise five business days before the execution of the modification, or the franchisee must have at least five business days to rescind agreement to the modification.<sup>4</sup>

Under existing law, franchisors seeking an exemption from registration requirements must submit audited financial statements for the just ended fiscal year.<sup>5</sup> If the fiscal year ends within 90 days of the date of claim for the exemption, Chapter 562 permits the franchisor to substitute the preceding year's audited financial statements.<sup>6</sup>

Additionally, Chapter 562 imposes a 30 day time limit in which a franchisor must request a hearing in connection with a stop order issued by the Commissioner.<sup>7</sup>

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2. *Id.* § 31007 (definition of franchisor).
  3. *Id.* § 31006 (definition of franchisee).
  4. *Id.* § 31125(b).
  5. *Id.* § 31101(a).
  6. *Id.*
  7. *Id.* § 31117.

### **Business Associations and Professions; fraudulent securities practices**

Corporations Code §§ 25213.3, 25502.5 (new); §§ 25214, 25215, 25540, 25541 (amended).

SB 2578 (Robbins); 1988 STAT. Ch. 1339

Chapter 1339 requires the Commissioner of Corporations to suspend or bar from any position a broker-dealer or any employee, director, partner, or agent of a broker-dealer who has been convicted of any act or omission in violation of specified criminal offenses.<sup>1</sup>

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1. CAL. CORP. CODE § 25213.3 (the broker-dealer must be given appropriate notice and opportunity for hearing in accordance with Corporations Code section 25215). The specified criminal offenses are felonies or misdemeanors in violation of Corporations Code section 25541 (use of device, scheme or artifice to defraud) that are committed on or after January 1, 1989. *Id.* § 25213.3. Existing law provides that the commissioner may censure, deny, suspend or revoke a certificate of any broker-dealer and may suspend or bar from employment or control any employee, director, partner, or agent of a broker-dealer who has been convicted of specific offenses. *Id.* §§ 25212, 25213.

Chapter 1339 permits the issuer of securities or its shareholders to bring a suit against those persons trading issuer securities on non-public material information.<sup>2</sup> Recovery is allowed for up to three times the difference between the price at which the security was purchased or sold and the market value which the security would have had if the information had been publicly available.<sup>3</sup> Chapter 1339 limits actions by the corporation or its shareholders to issuers with total assets in excess of \$1,000,000 and that have a class of equity securities held of record by 500 or more persons.<sup>4</sup> Amounts recoverable under these provisions are reduced by any amount paid by the defendant pursuant to a Securities and Exchange Commission action for the same transactions.<sup>5</sup> Chapter 1339 also amends the penalty for any violation of corporate securities law.<sup>6</sup>

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2. *Id.* § 25502.5(a). *See id.* § 25402 (purchase or sale of securities by persons having access to material information not available to the public through special relationships with the issuer). Persons include any officer, director, or controlling person of an issuer or any other person whose relationship to the issuer gives access to material information not generally available to the public. *Id.* Boards of directors are required to consider in good faith a shareholder's allegation that the prohibition against insider trading has been violated. *Id.* § 25502.5(c).

3. *Id.* § 25502.5(a).

4. *Id.* § 25502.5(d).

5. *Id.* § 25502.5(b).

6. *Id.* §§ 25540(a), 25541 (to a maximum fine of \$250,000). A bill substantially identical to Chapter 1339 was introduced in 1987 but vetoed by the Governor because of concerns that the bill was overbroad in its application. Deukmejian, Governor's Veto Message to Senate on Senate Bill No. 1666, SENATE J., 4117, Oct. 1, 1987, (1987 Reg. Sess.) This bill, unlike the vetoed bill, does not force the revocation of a broker-dealer's license. CAL. CORP. CODE § 25213.3. Furthermore, the scope of the bill has been reduced by effectively exempting smaller and closely held companies. *Id.* § 25502.5(d).

## **Business Associations and Professions; industrial loan company public disclosure exemptions**

Financial Code §§ 18394, 18454.5 (new); §§ 22454, 22470, 24454, 24470 (amended).

AB 3028 (Lancaster); 1988 STAT. Ch. 537

Sponsor: Department of Corporations

Support: Manatt, Phelps, Rothenberg & Phillips

Existing law provides that the Commissioner of Corporation's investigation reports of industrial loan companies are exempt from

public disclosure under the California Public Records Act.<sup>1</sup> Existing law further provides that the exemption is waived and the record is subject to public disclosure upon disclosure of an otherwise exempt record to any member of the public.<sup>2</sup>

Under Chapter 537, the disclosure of an investigation report to the officers and directors of an industrial loan company does not constitute a waiver of the public disclosure exemption, so long as the report seeks corrective action.<sup>3</sup> Chapter 537 also makes it a misdemeanor for a representative of an industrial loan company to make willfully any untrue statement of material fact or to omit willfully to state any material fact in any document filed with the Commissioner of Corporations.<sup>4</sup>

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1. CAL. GOV'T CODE § 6254(d).

2. *Id.* § 6254.5.

3. CAL. FIN. CODE § 18394. *See also* CAL. GOV'T CODE § 6254.5(c) (waiver of exemption is not applicable to statutes limiting disclosure of specified writings to certain purposes).

4. CAL. FIN. CODE § 18454.5. *See also id.* § 18435 (willful violation of provision of Industrial Loan Law or rules, orders, and regulations of the Commissioner of Corporations is a misdemeanor). *But see id.* §§ 18447 (knowingly falsifying an entry in a book, record, written report, exhibit, or statement is a felony); 18454 (willfully falsifying or omitting an entry in a book, record, tag, statement of the business, or in connection with any transaction of the company, with intent to deceive, is a felony).

## **Business Associations and Professions; limited—equity housing cooperatives**

Business and Professions Code § 11003.4 (amended).

AB 3875 (Bates); 1988 STAT. Ch. 430

Sponsor: California Coalition for Rural Housing

Support: California Rural Legal Assistance Foundation; Western Center on Law and Poverty; Santa Cruz County Board of Supervisors

Existing law subjects a limited-equity housing cooperative<sup>1</sup> to all the requirements of the Subdivided Lands Act pertaining to stock cooperatives, including the public report issued by the Department of Real Estate prior to the sale or lease of subdivided land.<sup>2</sup> Existing law exempts a limited-equity housing cooperative from these require-

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1. CAL. HEALTH & SAFETY CODE § 33007.5 (definition of limited-equity housing cooperative).

2. CAL. BUS. & PROF. CODE §§ 11003.4(a), 11010.

ments if the cooperative meets all specified conditions.<sup>3</sup> Chapter 430 expands the exemption conditions to include limited-equity housing cooperatives in which: (1) State and federal housing agencies<sup>4</sup> finance at least fifty percent of the total project or one hundred thousand dollars, whichever is less; (2) no more than twenty percent of the total development cost of a limited-equity mobilehome park is provided by purchasers of membership shares; and (3) the recipient of the financing executes a regulatory agreement with either the federal or state agency financing the project, or a local agency financing the project under a regulatory agreement that meets Department of Housing and Community Development standards.<sup>5</sup>

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3. *Id.* § 11003.4(b). The existing conditions are: (1) State and federal housing agencies finance at least 50% of the total construction or development cost, or the real property to be occupied by the cooperative was sold by the Department of Transportation for the development of the cooperative and has a regulatory agreement approved by the Department of Housing and Community Development for the term of the permanent financing; (2) no more than 10% of the total development cost is provided by purchasers of membership shares; (3) a regulatory agreement is executed between the recipient of the financing and either one of the federal or state agencies financing the project, which covers the cooperative for a term at least as long as the duration of the permanent financing; (4) the federal or state agency which executes the regulatory agreement satisfies itself that the bylaws, articles of incorporation, occupancy agreement, subscription agreement, any lease of the regulated premises, any arrangement with partners, and arrangement for membership share accounts provide adequate protection of the rights of cooperative members; and (5) the federal or state agency receives a legal opinion, from the attorney for the recipient of the financing, that the cooperative meets the requirements of section 33007.5 of the Health and Safety Code and the exemption provided by this section. *Id.*

4. The agencies consist of the U.S. Department of Housing and Home Administration, the National Consumers Cooperative Bank, the California Housing Finance Agency, or the Department of Housing and Community Development, alone or in any combination with each other, or with the city, county, or redevelopment agency in which the cooperative is located. *Id.* § 11003.4(b)(1).

5. *Id.*

## **Business Associations and Professions; osteopathic physicians and surgeons—unconscionable fees**

Business and Professions Code § 2457.5 (new).

SB 2536 (Craven); 1988 STAT. Ch. 325

Sponsor: Osteopathic Physicians and Surgeons; State Board of Osteopathic Examiners

Existing law regulates the conduct of osteopathic physicians and surgeons and specifies grounds for disciplinary action.<sup>1</sup> Under Chap-

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1. CAL. BUS. & PROF. CODE §§ 2220-2317.

ter 325, the charging of an unconscionable fee<sup>2</sup> by an osteopathic physician or surgeon constitutes unprofessional conduct and is ground for disciplinary action.<sup>3</sup>

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2. "A fee is unconscionable when it is so exorbitant and wholly disproportionate to the services performed so as to shock the conscience of physicians of ordinary prudence practicing in the same community." *Id.* § 2457.5(b). Factors to consider in determining the reasonableness of a fee include: (1) The time and effort required; (2) the novelty and difficulty of the procedure and treatment; (3) the skill required to perform the procedure or treatment properly; (4) the likelihood, if apparent to the patient, that the proper treatment of the patient will preclude the physician from remuneration from other sources; (5) any requirements or conditions imposed by the patient or the circumstances; (6) the nature and length of the professional relationship with the patient; (7) the experience, reputation, and ability of the physician performing the services; (8) the results obtained; and (9) the existence of full fee disclosure and knowing patient consent. *Id.*

3. *Id.* § 2457.5.

### **Business Associations and Professions; privacy—video cassette sales or rental services**

Civil Code § 1799.3 (new).

SB 2248 (Lockyer); 1988 STAT. Ch. 1050

Support: American Civil Liberties Union

Existing law protects an individual's right to privacy from intrusion by the state and private actors.<sup>1</sup> Chapter 1050 prohibits the disclosure of any personal information or the contents of any record which is prepared or maintained in connection with the sale or rental of video cassettes.<sup>2</sup> Chapter 1050 provides exceptions to the non-disclosure rule for disclosures made under the following circumstances: (1) In compliance with a subpoena, court order, or a lawful search warrant;<sup>3</sup> (2) in cooperation with a law enforcement agency investigating crim-

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1. CAL. CONST. art 1, § I. See *Porten v. University of San Francisco*, 64 Cal. App. 3d 825, 829, 134 Cal. Rptr. 839, 842 (1976) (the inalienable right to privacy is protected against violation by the state or any individual); *White v. Davis*, 13 Cal. 3d 757, 774, 533 P. 2d 222, 233-34, 120 Cal. Rptr. 94, 105-106 (1975) (the right to privacy prevents business interests from misusing information gathered for one purpose in order to serve other purposes). See generally *Review of Selected 1977 Legislation*, 9 PAC. L. J. 335, 337 (1978) (discussion of business records and the regulation of disclosures by persons performing bookkeeping services).

2. CAL. CIV. CODE § 1799.3(a) (including sales or rental information).

3. *Id.* § 1799.3(b)(1), (3).



inal activity,<sup>4</sup> unless the disclosure is prohibited by law;<sup>5</sup> (3) in response to a taxing agency for the purpose of tax administration;<sup>6</sup> (4) discovery;<sup>7</sup> and (5) the disclosure of names and addresses solely for commercial purposes.<sup>8</sup>

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4. *But c.f.* *Burrows v. Superior Court*, 13 Cal. 3d 238, 245, 529 P.2d 590, 594, 118 Cal. Rptr. 166, 170 (1974) (where an accused has a reasonable expectation of privacy in bank statements and records, the voluntary relinquishment of such records by the bank at the request of police did not constitute valid consent by the accused).

5. *Id.* § 1799.3(b)(4).

6. *Id.* § 1799.3(b)(5).

7. *Id.* § 1799.3(b)(2).

8. *Id.* § 1799.3(b)(6). The penalty for a willful violation is a civil fine up to \$500, which may be recovered by the person who is the subject of the records. *Id.* § 1799.3(c). The state may recover an additional \$500 per violation if a person has three or more violations in a six month period. *Id.* § 1799.3(d)(1). These penalties are not the exclusive remedies. *Id.* § 1799.3(e). See *Briscoe v. Reader's Digest*, 4 Cal. 3d 529, 543, 483 P. 2d 34, 44, 93 Cal. Rptr. 866, 876 (1971) (plaintiffs' complaint stated a cause of action for public disclosure of private facts when defendant published an article which disclosed true, but embarrassing private facts about the plaintiff). See generally H.R. 4947, 100th Cong., 2d Sess., Cong. Rec. (1988) (Video & Library Privacy Protection Act of 1988 introduced in response to the Bork incident of September 1987, when a Washington newspaper published a profile of Judge Robert H. Bork based on 146 films his family had rented from a video store).

## **Business Associations and Professions; property inspections— asbestos hazards**

Business and Professions Code § 7118.4 (new); Labor Code § 6509.5 (new).

AB 3969 (Hauser); 1988 STAT. Ch. 1491

Chapter 1491 prohibits a contractor or asbestos consultant,<sup>1</sup> when inspecting property to determine the presence of asbestos,<sup>2</sup> from

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1. Chapter 1491 also applies to any employee, subsidiary, or commonly controlled entity of the contractor or asbestos consultant. CAL. BUS. & PROF. CODE § 7118.4, CAL. LAB. CODE § 6509.5. See *id.* § 6509.5(e)(2) (definition of asbestos consultant).

2. CAL. LAB. CODE § 6501.7 (definition of asbestos).

3. CAL. BUS. & PROF. CODE § 7118.4(a) (contractors); CAL. LAB. CODE § 6509.5(a) (asbestos consultants). These sections apply if the contractor or asbestos consultant knows the asbestos report is required by a lender or a public entity as a condition to loaning money or issuing a permit on the property. *Id.*

corrective work based on the report of another is not prohibited from making an inspection prior to performing work or to determine if additional work is required.<sup>4</sup> Chapter 1491 further provides that any violation of these provisions is a misdemeanor subject to a fine and possible imprisonment.<sup>5</sup>

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4. CAL. BUS. & PROF. CODE § 7118.4(b) (contractors); CAL. LAB. CODE § 6509.5(b) (asbestos consultants).

5. CAL. BUS. & PROF. CODE § 7118.4(d) (contractors); CAL. LAB. CODE § 6509.5(d) (asbestos consultants) (a fine of not less than \$3,000 and not more than \$5,000, or imprisonment for not more than one year, or both).

### **Business Associations and Professions; psychologists— fictitious name permits**

Business & Professions Code §§ 2930.5, 2987.3 (new); § 2960 (amended).

AB 4016 (Filante); 1988 STAT. Ch. 800

Support: California State Psychological Association

Existing law does not directly authorize or prohibit psychologists from practicing under a fictitious name.<sup>1</sup> Chapter 800 prohibits psychologists<sup>2</sup> from using fictitious names<sup>3</sup> in public communications,<sup>4</sup> concerning or relating to their practice, unless they obtain a fictitious name permit.<sup>5</sup>

Chapter 800 authorizes the issuance of fictitious name permits to psychologists who: (1) Hold a valid, current license and have no charges of unprofessional conduct pending, (2) own or lease their place of practice, (3) entirely own and control their practice, (4) propose a fictitious name including the words “psychology group” or “psychology clinic”.<sup>6</sup> In addition, Chapter 800 authorizes the com-

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1. See CAL. BUS. & PROF. CODE §§ 2900 - 2989 (Psychology Licensing Law). See also CAL. CODE REGS. tit. 16, § 1380.6 (1987) (requires psychologists to display their license number regardless of whether the licensee's name is real or fictitious).

2. CAL. BUS. & PROF. CODE § 2960(q) (includes individuals alone or in connection with a partnership, group, or professional corporation).

3. *Id.* (includes any false, assumed, or other name that is not the psychologist's own).

4. *Id.* (includes any public announcement, advertisement, or sign).

5. *Id.* § 2960. A violation may result in the suspension or revocation of a psychologist's license, or the imposition of probationary conditions. *Id.*

6. *Id.* § 2930.5(b).

mittee to revoke or suspend a fictitious name permit if the licensee's license has been revoked<sup>7</sup> or if the licensee has failed to continue to comply with the foregoing conditions.<sup>8</sup>

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7. *Id.* § 2930.5(e). The committee may not revoke a permit until the charges of unprofessional conduct against the licensee have resulted in revocation of the license. *Id.*

8. *Id.* § 2930.5(d).

## **Business Associations and Professions; Real Estate Recovery Program**

Business and Professions Code § 10474 (amended).  
AB 4034 (Stirling); 1988 STAT. Ch. 517  
(Effective August 23, 1988)

Existing law provides procedures by which a judgment creditor may collect funds from the Real Estate Recovery Account<sup>1</sup> when unsuccessful in recovering a judgment against a licensed real estate agent or broker.<sup>2</sup> When the conduct of two or more licensed real estate agents or brokers in one transaction results in a judgment, Chapter 517 permits the judgment creditor to collect from the Recovery Account based on the judgment against any of the licensees involved in the transaction.<sup>3</sup> Chapter 517 codifies existing case law as exemplified in *Edmonds v. Augustyn*.<sup>4</sup>

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1. See CAL. BUS. & PROF. CODE §§ 10450 (establishing the Real Estate Fund), 10450.6 (establishing the Recovery Account within the Real Estate Fund).

2. *Id.* § 10471. See generally *id.* §§ 10470-10481 (setting forth procedures for collecting from the Recovery Account after judgment is obtained based on the defendant licensee's fraud, misrepresentation, deceit, or conversion of trust funds).

3. CAL. BUS. & PROF. CODE § 10474(d).

4. 1983 Cal. Stat. ch. 517, sec. 2, at \_\_\_\_\_ (amending CAL. BUS. & PROF. CODE § 10474); *Edmonds v. Augustyn*, 193 Cal. App. 3d 1056, 1067, 238 Cal. Rptr. 704, 711 (1987) (holding that when a transaction requiring a license involves more than one licensee, and the conduct of each licensee results in judgment, the victim may collect from the Recovery Fund against any licensed judgment debtor). In *Edmonds*, the court stated that the purpose of Business and Professions Code section 10471 is not only to protect consumers, but also to encourage the real estate profession to pursue higher standards. *Id.* at 1063, 238 Cal. Rptr. at 708. The Legislature does not intend Chapter 517 to overturn *Fox v. Prime Ventures*, 86 Cal. App. 3d 333, 337, 150 Cal. Rptr. 202, 205 (1978) (the transaction resulted from acts

requiring a single license, thus limiting recovery from the Fund to \$20,000), nor *Deas v. Knapp*, 29 Cal. 3d 69, 75, 623 P.2d 775, 778, 171 Cal. Rptr 823, 826 (1981) (the judgment award could not exceed the statutory limitation of \$20,000 even though the defendant broker held more than one license, nor could the limit be exceeded for an award of costs). 1988 Cal. Stat. ch. 517, sec. 2, at \_\_\_\_ (statement of legislative intent).

## **Business Associations and Professions; redemption of uncertificated securities**

Corporations Code § 509 (amended).  
AB 3313 (Chandler); 1988 STAT. Ch. 513  
Sponsor: California State Bar

Existing law specifies the procedures a corporation must follow to redeem outstanding shares of stock evidenced by certificates.<sup>1</sup> Chapter 513 sets forth the procedures a corporation must follow to redeem uncertificated securities.<sup>2</sup> Under Chapter 513, in addition to the procedures required for certificated securities, the corporation must provide the bank or trust company a certificate from a corporate officer, which includes the holders of the securities registered on the corporate books and the number of shares held by each.<sup>3</sup> The bank or trust company holding the redemption fund deposit is entitled to rely on that certificate in paying out the redemption funds.<sup>4</sup>

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1. CAL. CORP. CODE § 509(a), (d). A corporation must give proper public notice of the redemption and deposit funds sufficient to cover the shares called for redemption with a bank or trust company. *Id.*

2. *Id.* § 509(d)(2). Uncertificated securities are securities not evidences by a certificate. *Id.* § 191.1. See also CAL. COM. CODE § 8102(b) (definition of uncertificated securities).

3. CAL. CORP CODE § 509(d)(2).

4. *Id.* § 509(d)(3).

## **Business Associations and Professions; resignation of agents**

Corporations Code § 1503 (amended).  
AB 3836 (N. Waters); 1988 STAT. Ch. 352

Under existing law, an agent for service of process may resign by

filing a signed and acknowledged written statement of resignation.<sup>1</sup> Chapter 352 provides that an agent may resign by disclaiming having been properly appointed as the agent.<sup>2</sup> Chapter 352 further provides that any person named as an officer or director may indicate that the person was never properly appointed as the officer or director.<sup>3</sup>

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1. CAL. CORP. CODE § 1503. *See generally id.* § 1502. Every corporation must file with the Secretary of State, within 90 days of incorporating, the names and addresses of its directors and officers, and a designation of the agent for the purpose of service of process. *Id.* The corporation must annually file that information or indicate that no changes have occurred since the last statement was filed. *Id.*

2. CAL. CORP. CODE § 1503(b).

3. *Id.*

### **Business Associations and Professions; retail installment accounts—terms, delinquency, notice**

Civil Code § 1810.9 (repealed); §§ 1810.3, 1810.12 (amended).

AB 4096 (Hill); 1988 STAT. Ch. 1402

Support: California Retailers Association

Existing law requires a retailer to give thirty days notice to its credit account buyers if any change is to be made to their retail installment accounts.<sup>1</sup> With the enactment of Chapter 1402, such notice is not required when the change involves reducing any part of a finance or other charge.<sup>2</sup>

Prior law required a signed agreement before a retailer could assess a delinquency charge on an installment account.<sup>3</sup> Chapter 1402 revokes the requirement of a signed agreement, and allows a retailer to impose a late charge if written notice of the assessment is given to the buyer.<sup>4</sup> However, the retailer may not assess a delinquency

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1. CAL. CIV. CODE § 1810.3(d).

2. *Id.* (providing that notice will be sufficient if it appears on or accompanies ordinary periodic statements sent to buyer).

3. 1979 Cal. Stat. ch. 763, § 1, at 2804 (amending CAL. CIV. CODE § 1810.12). Such charges must have been stipulated within an agreement signed by and given to the buyer. *Id.*

4. *Id.* §1810.3(d). Notice is required at least thirty days prior to the effective date of the change or the beginning of the billing cycle, whichever is earlier. *Id.* Compare CAL. CIV. CODE § 1810.12 (no agreement required) with 1983 Cal. Stat. ch. 763, sec. 1, at 2804 (enacting CAL. CIV. CODE § 1810.12) (requiring written agreement).

charge on payment for a purchase made prior to providing the buyer with written notice concerning the delinquency charge.<sup>5</sup>

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5. CAL. CIV. CODE § 1810.12.

### **Business Associations and Professions; review of attorney disciplinary actions**

Business and Professions Code § 6082 (amended).  
SB 2818 (Lockyer); 1988 STAT. Ch. 1217

Under existing law, an attorney who is the subject of a complaint or who is denied reinstatement by the board<sup>1</sup> can have the action of the board reviewed by the California Supreme Court.<sup>2</sup> Chapter 1217 provides that either the California Supreme Court or a California Court of Appeal may review disciplinary actions of the board.<sup>3</sup>

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1. Board includes the State Bar Court. CAL. BUS. & PROF. CODE § 6086.5.

2. *Id.* § 6082 (providing that disciplinary actions by any committee authorized by the board to make a determination on their behalf are also reviewable).

3. *Id.* (requiring review by the Court of Appeal to be conducted in accordance with the procedure prescribed by the Supreme Court). Compare CAL. BUS. & PROF. CODE § 6082 with 1939 Cal. Stat. ch. 34, sec. 1, at 356 (enacting CAL. BUS. & PROF. CODE § 6082) (Chapter 1217 adds language which allows for review by a California Court of Appeal). See generally Comment, *Attorney Discipline and the California Supreme Court: Transfer of Direct Review to the Courts of Appeal*, 72 CALIF. L. REV. 252 (1984) (arguing in favor of transferring disciplinary cases to the Court of Appeal).

## **Business Associations and Professions; savings associations**

Financial Code §§ 5612, 5860, 5861, 5862, 5863, 5864, 5865, 5866, 5867, 5868, 7260, 7261, 7262, 7263, 7264, 7265, 7266, 7267, 7268, 7269, 7270, 7271, 7272, 7273, 7274, 7275, 7509, 7800, 8230, 8254 (new); §§ 863, 5501.5, 5606, 5615, 5616, 5617, 5621, 5654, 6475, 6551, 7100, 7250, 7453, 7500, 8030, 8154, 8159, 8200, 8225, 8250, 8251 (amended).

AB 2855 (Bane); 1988 STAT. Ch. 718

Sponsor: California League of Savings Institution

Support: Department of Savings & Loan

With the enactment of Chapter 718, savings accounts into which a depositor has agreed to make periodic installment deposits must earn interest at a rate of interest per annum not less than the lowest rate paid on other types of savings deposits.<sup>1</sup> Chapter 718 also empowers the Savings and Loan Commissioner (Commissioner)<sup>2</sup> to enforce any statute or regulation of the Federal Deposit Insurance Corporation applying to associations.<sup>3</sup> Under Chapter 718, the Commissioner may appoint a conservator for an association if the association is: (1) In an impaired condition; (2) engaging in practices that threaten to result in impaired condition; (3) in violation of an order or injunction, as authorized by this division; or (4) refusing to submit its books, papers, and affairs to the inspection of the commissioner.<sup>4</sup>

Existing law requires each domestic association's articles of incorporation to include a statement that the association is formed for specified reasons.<sup>5</sup> Under Chapter 718, a mutual association<sup>6</sup> must state that it is formed to accumulate capital by issuance of savings accounts and to grant holders of savings accounts membership right in the association with entitlement to one vote for each one hundred dollars of the withdrawal value of each savings account.<sup>7</sup>

Under existing law, a mutual association may, with the approval of the Commissioner, amend its articles of incorporation to authorize the issuance of stock and may issue stock.<sup>8</sup> Chapter 718 provides

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1. CAL. FIN. CODE § 863(a).

2. *Id.* § 5104 (definition of Commissioner).

3. *Id.* § 5606(c). *See also* 12 U.S.C. §§ 1811-1832 (1984) (Federal Deposit Insurance Corporation statutes).

4. CAL. FIN. CODE § 8225(a).

5. *Id.* § 5501.5(a)-(g) (reasons of formation that must be specified in the articles of incorporation).

6. *Id.* § 5109 (definition of mutual association).

7. *Id.* § 5501.5(f).

8. *Id.* § 5621.

that the corporate existence will continue for a mutual association that amends its articles of incorporation to authorize the issuance of stock and issues the stock.<sup>9</sup>

Under Chapter 718, any mutual association can reorganize as a mutual holding company.<sup>10</sup> The mutual association can reorganize by incorporating and organizing as a stock association<sup>11</sup> a former reorganized savings and loan association, by transferring to the reorganized stock association a substantial part of the mutual association's assets, and by causing the reorganized stock association to assume all or a substantial part of the liabilities of the mutual association, including all of its savings account liabilities.<sup>12</sup>

Existing law allows certain organizations<sup>13</sup> to make withdrawals by negotiable or transferable instruments for the purpose of making transfers to third parties from an interest or dividend paying account.<sup>14</sup> Chapter 718 authorizes an association to provide this service for political organizations.<sup>15</sup>

Existing law permits an association to invest in specified bonds and securities.<sup>16</sup> Chapter 718 lists additional authorized investments in bonds and securities.<sup>17</sup> Chapter 718 also requires an association to establish maximum loan-to-value-ratios<sup>18</sup> for loans secured by real estate.<sup>19</sup>

Existing law requires an association,<sup>20</sup> doing business in this state, to pay an annual assessment for its pro rata share of all operating costs and expenses for the ensuing year.<sup>21</sup> Chapter 718 makes the payment of this assessment<sup>22</sup> a condition of continuing to do business in this state.<sup>23</sup>

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9. *Id.* The stock association which results is deemed to be a continuation of the mutual association. *Id.*

10. *Id.* § 5860. The mutual association must have prior approval of the commissioner to reorganize. *Id.*

11. *Id.* § 5121 (definition of stock association).

12. *Id.* § 5860. The reorganization of a mutual association must be approved by the board of directors and by members of the mutual association. *Id.* § 5862.

13. These organizations are religious, educational, charitable, philanthropic or other similar organizations. *Id.* § 7100(b).

14. *Id.* § 7100(a).

15. *Id.* § 7100(b).

16. *Id.* §§ 7250, 7252(a).

17. *Id.* §§ 7260-7274.

18. *See generally id.* § 7509(d) (determination of compliance with maximum loan-to-value-ratio limitations for real estate loans).

19. *Id.* § 7509(a). The board of directors must also establish standards for the maintenance of hazard insurance, which is considered necessary to protect the association's interest in real estate security for its loans. *Id.* § 7800.

20. *Id.* § 8030(b) (definition of an association).

21. *Id.* § 8030(a).

22. *Id.* § 8030(c) (definition of an assessment).

23. *Id.* § 8030(a).



## **Business Associations and Professions; savings associations**

Financial Code 10012 (amended).

SB 2470 (Vuich); 1988 STAT. Ch. 467

Existing law authorizes certain foreign savings associations<sup>1</sup> incorporated under the laws of specified states<sup>2</sup> to conduct the business of an association in California or acquire control of a California savings association.<sup>3</sup> Chapter 467 provides that a foreign holding company<sup>4</sup> with its principal place of deposits<sup>5</sup> in one of the specified states may acquire control of a California savings association.<sup>6</sup>

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1. Foreign savings associations may not be directly or indirectly controlled by either a foreign savings association that is incorporated under the laws of a state other than one of the specified regional states or a foreign holding company with its principal place of deposits located outside the specified regional states. CAL. FIN. CODE § 10012. *See id.* § 10010(c), (d) (definition of foreign savings association).

2. The specified states include Alaska, Arizona, Colorado, Hawaii, Idaho, Nevada, New Mexico, Oregon, Texas, Utah, and Washington. *Id.* § 10012. *See* *Northeast Bancorp, Inc. v. Board of Governors of the Federal Reserve System*, 472 U.S. 159, 173 (1985) (holding that state statutes may limit the acquisition of in-state banks to holding companies of certain regional states).

3. CAL. FIN. CODE § 10012. If the Savings and Loan Commissioner determines that the laws, court decisions, or practices of the jurisdiction of the foreign savings association or foreign holding company would prohibit, restrict, condition, or otherwise limit a California savings association from conducting the business of, or acquiring the control of a savings association in that jurisdiction, a similar prohibition, restriction, condition, or limitation will be applied to the foreign savings association or holding company. *Id.*

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

5. Principal place of deposits means the state in which the total deposits of all of the entity's depository operations and those of its affiliates are largest. *Id.* § 10010(e).

6. *Id.* § 10012.

## **Business Associations and Professions; securities—duty to disclose voting record**

Corporation Code § 711 (new).\*

SB 1600 (Garamendi); 1988 STAT. Ch. 1360

Chapter 1360 requires a person with power to vote<sup>1</sup> shares of stock

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\* The obligation to maintain and disclose a voting record under section 710(b), (c) will commence January 1, 1990. CAL. CORP. CODE § 711(i).

1. "Signing a proxy on another's behalf and forwarding it for disposition or receiving voting instructions does not constitute the power to vote." *Id.* § 711(g). Upon reasonable

on behalf of another<sup>2</sup> to maintain a record of the manner in which the shares were voted.<sup>3</sup> Chapter 1360 further requires that the person with the power to vote shares of stock on behalf of another, or a designated agent,<sup>4</sup> must disclose the voting record with respect to a specified security upon a reasonable written request.<sup>5</sup> The legislature stated that Chapter 1360 supports the policy that the informed and active involvement of beneficial owners and beneficiaries of shares of stock in holding legal owners and management accountable in the exercise of corporate power is essential to the interests of those beneficiaries and to the economy and well-being of the state.<sup>6</sup>

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written request by a person entitled to request a voting record, a person forwarding proxies or receiving voting instructions must disclose the identity of the person having the power to vote shares. *Id.*

2. A person on whose behalf shares are voted includes: (1) a participant or beneficiary of an employee benefit plan, which holds the shares for the benefit of the participant or beneficiary; (2) a shareholder, beneficiary, or contract owner of any entity, or of any portfolio of any entity, as defined in Section 3(a) of the federal Investment Company Act of 1940, as amended, to the extent the entity, or portfolio holds the shares for which the record is requested. *Id.* § 711(b). A person on whose behalf shares are voted does not include: (1) a person who possesses the right to terminate or withdraw from the shareholder, contract owner, participant, or beneficiary relationship with any entity or portfolio of any entity; (2) a person entitled to receive information about a trust pursuant to Section 16061 of the Probate Code; (3) a beneficiary, participant, contract owner, or shareholder whose interest is funded through the general assets of a life insurance company authorized to conduct business in this state. *Id.* § 711(c).

3. *Id.* § 711(d). The record must be maintained for 12 consecutive months from the date of the vote. *Id.*

4. Unless a governing instrument provides otherwise, if one or more persons has the power to vote shares on behalf of another, the person or persons can designate an agent who must maintain and disclose the record. *Id.* § 711(h).

5. *Id.* § 711(e). If the person possessing the power to vote shares on behalf of another holds the power under an agreement entered into with a party other than the person making the request for disclosure, the person with the power to vote may make the requested disclosure to that party. *Id.* § 711(e)(2). If disclosure is made to that party and not to the person making the request, the person disclosing the record may not assess a charge to defray the expenses of disclosure, unless the parties agree otherwise. *Id.* § 711(e)(2). The identity of the party to whom the requested disclosure was made must be disclosed to the beneficiary requesting disclosure of the voting record. *Id.* § 711(e)(1). In all other circumstances the disclosure must be made to the beneficiary or participant making the request. *Id.* When the entity required to make a disclosure is organized as a unit investment trust as defined in Section 4(2) of the federal Investment Company Act of 1940, the open-ended investment companies underlying the unit investment trust must promptly make available their proxy voting records to the unit investment trust upon evidence of a bona fide request for voting record information. *Id.* § 711(f).

6. *Id.* § 711(a).

**Business Associations and Professions; small business incubator development**

Corporations Code § 14133 (new).

A.B. 2771 (Chacon); 1988 STAT. Ch. 634

Existing law requires small business development corporations to give high priority to loans and loan guarantees for businesses that will increase employment of disadvantaged, disabled, or unemployed persons and increase employment of youth residing in areas of high youth unemployment and high youth delinquency.<sup>1</sup> Chapter 634 provides that urban development corporations and rural development corporations must similarly give high priority to loans and loan guarantees for small business incubators<sup>2</sup> and to businesses that lease space in incubators.<sup>3</sup>

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1. CAL. CORP. CODE § 14066(d).

2. *Id.* § 14133(b) (an incubator is a facility that allows new small businesses to increase their probability of success by sharing needed capital equipment, services, and facilities). In enacting Chapter 634, the legislature stated that small businesses are the source of most new replacement jobs, the origin of most innovations, and the generator of economic growth in California. 1988 Cal. Stat. ch. 634, sec. 1(b)(1)-(2), at \_\_\_\_\_. However, a majority of these small businesses fail in the first five years of operation. *Id.* The legislature also stated that small business incubator facilities significantly increase the small businesses' probability of success. 1988 Cal. Stat. ch. 634, sec. 1(b)(3), at \_\_\_\_\_.

3. CAL. CORP. CODE § 14133(a). To be given high priority in the issuance of loans and loan guarantees, the businesses that lease space in incubators must meet the requirements of a qualified business under section 7082(h) of the Government Code, and the incubator headquarters must be located within enterprise zones as defined in section 7073(d) of the Government Code or within economic incentive areas designated under any other provision of law. *Id.*

**Business Associations and Professions; statute of frauds—  
loan commitments**

Civil Code § 1624 (amended).

SB 2789 (Maddy); 1988 STAT. Ch. 1096

Chapter 1096 declares that a promise or commitment to loan money or to grant or extend credit in an amount greater than \$100,000 is

invalid unless in writing<sup>1</sup>, or unless there exists a note or memorandum signed by the party to be charged.<sup>2</sup> This section applies only if funds are not primarily for personal, family, or household purposes, and if the commitment is made by a person engaged in the business of lending, or arranging or extending credit.<sup>3</sup>

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1. See CAL. CIV. CODE § 1624 (statute of frauds, requiring specified contracts to be in writing in order to be valid).

2. *Id.* § 1624(g).

3. *Id.* A contract, promise, undertaking, or commitment to loan money secured by residential property consisting of one to four dwelling units is considered to be primarily for personal, family, or household purposes. *Id.* Chapter 1096 applies to any claim or cause of action arising on or after January 1, 1989. 1988 CAL. STAT. ch. 1096, sec. 3, at \_\_\_\_\_. All judicial and legislative defenses and exceptions to the statute of frauds apply to this section. *Id.* See e.g., CAL. CIV. CODE § 1623 (enforcement of oral contract by reason of fraud); Levin v. Knight, 780 F.2d 786, 788 (9th Cir. 1986) (party prevented from asserting the statute of frauds as a defense to a fraudulent misrepresentation).

## **Business Associations and Professions; structural pest control reports**

Business and Professions Code § 8516 (repealed, new, amended).\*

AB 4274 (Bane); 1988 STAT. Ch. 1184

Sponsor: California Association of Realtors

Support: Department of Consumer Affairs; Pest Control Operators of California

Existing law prohibits a registered company<sup>1</sup> from beginning work on a contract or from issuing a statement regarding wood-destroying pests before inspecting the premises,<sup>2</sup> and requires a written report of the inspection.<sup>3</sup> Further, existing law provides that if a bid for

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\* Chapter 1184 amends existing California Business and Professions Code section 8516. 1988 Cal. Stat. ch. 1184, sec. 2, at \_\_\_\_\_. Effective on July 1, 1989, Chapter 1184 repeals California Business and Professions Code section 8516(a)-(f). 1988 Cal. Stat. ch. 1184, sec. 2, at \_\_\_\_\_ (repealing CAL. BUS. & PROF. CODE § 8516). Also effective July 1, 1989, Chapter 1184 adds California Business and Professions Code section 8516(a)-(i).

1. CAL. BUS. & PROF. CODE § 8506.1 (definition of registered company).

2. *Id.* § 8516(b).

3. *Id.* (copies of the report must be given to the person requesting the inspection and must be filed with the Structural Pest Control Board). See also *id.* § 8516.5 (copy to owner of the property). The report must include, among other things, a sketch of the structure showing infested areas, a list of conditions likely to lead to infestation, a description of areas

recommended repairs has been provided with the original report, then a bid which individually lists the cost of each recommended repair must also be included in the report or in a separate work agreement.<sup>4</sup> After July 1, 1989, Chapter 1184 requires a registered company to make available a report that lists actual infestations and that separately lists conditions that may lead to infestations.<sup>5</sup> A registered company that complies with this provision is relieved of liability for any damage resulting from conditions that the owner of the premises elects not to correct.<sup>6</sup>

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not inspected, information regarding remedies and pesticides, and under certain circumstances, a bid for repair. *Id.* § 8516(b)(6)-(11).

4. CAL. BUS. & PROF. CODE § 8516(f) (effective July 1, 1989, Chapter 1184 recodifies California Business and Professions Code section 8516(f) to California Business and Professions Code section 8516(i)).

5. *Id.* § 8516(c)(1), (2) (effective July 1, 1989, the registered company must notify the person ordering the inspection that a separate report is available and supply it upon request).

6. *Id.* § 8516(d) (effective on July 1, 1989). Chapter 1184, however, does not relieve a registered company of liability resulting from negligence, fraud, dishonest dealing, other violations pursuant to this chapter, or contractual obligations. *Id.*