balloon payments if any agreement includes a promise, representation, or similar undertaking to extend or seek the extension of the term of the loan or refinancing of the loan. This bill was signed by the Governor on May 20 (Chapter 86, Statutes of 1994).

The following bills died in committee: **AB 3272 (Bornstein)**, which would have required all disputes with an amount in controversy of $50,000 or less between buyers and sellers, prospective buyers and sellers, and their agents, arising out of real estate contracts, to be submitted to mediation before the parties resort to court action; **SB 945 (Hart)**, which would have, among other things, provided that a license issued to a real estate broker operating from a location outside California pursuant to a specified exemption shall be conditioned upon the licensee agreeing in writing to either (1) make the licensee's books, accounts, and files available to the Commissioner in California, or (2) pay the reasonable expenses for travel, meals, and lodging of the Commissioner incurred during any investigation made at the licensee's location outside California; and **SB 307 (Calderon)**, which, as amended June 22, would have provided that any homeowner whose home was rendered uninhabitable by the Northridge earthquake or the October and November 1993 wildfires, and who is using temporary housing not covered by insurance, may delay payment of principal and interest on a mortgage for a period not to exceed six months from the notification of the mortgagee or until 12:01 a.m. on January 17, 1996, whichever occurs first.

DEPARTMENT OF SAVINGS AND LOAN

Interim Commissioner:
Keith Paul Bishop
(213) 897-8202

The Department of Savings and Loan (DSL) is headed by a commissioner who has "general supervision over all associations, savings and loan holding companies, service corporations, and other persons" (Financial Code section 8050). DSL is part of the larger Business, Transportation, and Housing Agency. The Savings and Loan Association Law is in sections 5000 through 10050 of the California Financial Code. Departmental regulations are in Chapter 2, Title 10 of the California Code of Regulations (CCR). The Department, which has been recently downsized by the Wilson administration *[13:4 CRLR 128]*, now consists of four employees regulating only 14 state-chartered savings and loan institutions. The DSL staff includes the Interim Commissioner, an examiner, a staff analyst, and a part-time assistant.

Although recent state budgets refer to DSL as the "Office of Savings and Loan," DSL is still officially a department. Its responsibilities technically include licensing, examination, and enforcement, but the trend is away from state chartering of S&L institutions, DSL no longer performs field audits of state-chartered S&Ls, and its enforcement powers have been reduced to reviewing analyses performed by the federal Office of Thrift Supervision.

LEGISLATION

SB 1333 (Lockyer). Existing law requires banks and other financial institutions to maintain certain information concerning charges and interest on accounts, and to make that information available to the public; existing law also requires banks and other financial institutions to furnish depositors with statements concerning charges and interest on accounts. As amended August 18, this bill authorizes a supervised financial organization, defined to include banks, savings associations, savings banks, and credit unions, or charge card issuer, as defined, to charge and collect fees pursuant to a consumer credit agreement. This bill also limits the fees that a supervised financial organization may charge its credit cardholder customers under a consumer credit agreement as follows: $7 per monthly billing cycle as a late payment charge on the minimum payment due on a consumer credit agreement that is not paid within five days after the date the payment is due; $10 per monthly billing cycle as a late payment charge on the minimum payment due on a consumer credit agreement that is not paid within ten days after the date the payment is due; $15 per monthly billing cycle as a late payment charge on the minimum payment due that is not paid within fifteen days after the date the payment is due; and $10 on any overlimit charge that exceeds the credit limit by $500 or 120% of the credit limit as set forth in the consumer credit agreement, whichever is less.

The bill also provides that, in lieu of the $7 fee described above, if the consumer has already incurred two such late payment fees during the preceding twelve-month period, a supervised financial institution may charge no more than $10 per billing cycle as a late payment charge on the minimum payment due that is not paid within five days after the date the payment is due. Also, the bill requires that there must be at least 23 days between the monthly billing statement date and the date upon which the minimum payment is due, exclusive of the applicable late payment grace period, if the issuer is charging the $7 fee described above; if the issuer is charging the $10 or $15 late payment described above, there must be at least twenty days between the monthly billing statement date and the date upon which the minimum payment is due, exclusive of the applicable late payment grace period. The late payment grace period must be disclosed in the consumer credit or charge card agreement but need not be disclosed in any monthly or other billing statement. Finally, this bill authorizes supervised financial institutions to assess a finance charge at the rates set forth in the consumer credit agreement on the outstanding balance, which may include any late payment or overlimit fee charged on a prior billing statement.

According to an August 26 analysis by the Senate Rules Committee, SB 1333 represents major concessions by interested consumer credit providers and consumer groups to resolve an issue which has been the subject of intense debate involving three different bills over the course of two years (*see* description of AB 2830 below). SB 1333 is seen as offering credit providers with certainty regarding the validity of the fees they may impose on customers who pay late or exceed their credit limits, while providing California consumers with mandatory late payment grace periods and a reduction in the incidence of future overlimit fees. This bill was signed by the Governor on September 28 (Chapter 1079, Statutes of 1994).

H.R. 3841 (Neal), the Interstate Banking and Branching Efficiency Act of 1994, is federal legislation which allows for interstate banking transactions, mergers, and acquisitions. Among other things, the bill allows for the continuation of certain state powers, and allows state governments to opt out of allowing branching before June 1, 1997.

Another provision of H.R. 3841, however, will prevent federal regulators from proceeding with negligence actions against officers and employees of failed S&Ls; although an early version of the bill would have extended the statute of limitations for pursuing such actions, the final version of the bill extends the time only for actions involving fraud and willful misconduct. This will effectively bar most actions, since fraud and willful misconduct account for only about 20% of the failed S&Ls. This bill was signed by President Clinton on September 29 (Public Law No. 103-328).

H.R. 3474 (Gonzalez), the Community Development and Regulatory Act of 1994, is federal legislation which is aimed at reducing administrative requirements for insured depository institutions, including S&Ls, consistent with safe banking practices. Among other things, the bill sets stringent disclosure requirements for high-cost mortgages, requires that banks grant loans only if they first determine that a potential borrower can afford to repay the debt, and effectively makes flood insurance mandatory in high-risk areas. This bill was signed by President Clinton on September 23 (Public Law No. 103-325).

The following is a status update on bills reported in detail in CRLR Vol. 14, Nos. 2 & 3 (Spring/Summer 1994) at page 143:

SB 1542 (Kopp), as amended August 26, would have transferred the Business, Transportation and Housing Agency to the existing Trade and Commerce Agency, and established the Office of Business and Housing in the Trade and Commerce Agency to consist of the Department of Alcoholic Beverage Control, the Department of Corporations, the Department of Housing and Community Development, the Department of Real Estate, the Department of Savings and Loan, the State Banking Department, the Stephen P. Teale Data Center, and the California Housing Finance Agency. On September 27, Governor Wilson vetoed this bill, contending that "the reorganization of state government is the prerogative of the executive branch, not the legislative branch of government." Moreover, Wilson claimed that the Secretary of Business, Transportation and Housing is already addressing many of the concerns which prompted the introduction of this legislation.

AB 2830 (Brulte), as amended May 9, would have superseded California caselaw and permitted supervised financial institutions to charge and collect any fee for late payments, over-the-limit usage, and bounced checks which is stated in their customer credit agreement and is "commercially reasonable," defined as "less than or equal to a comparable fee used by at least one of the ten largest lenders headquartered outside of California providing a similar type of open-end credit." This bill contained the provisions formerly in SB 1145 (Boatwright), which was rejected on a 5–4 vote by the Senate Judiciary Committee in January; AB 2830 died in committee, in favor of SB 1333 (Lockyer), which took a compromise position between the interests of consumers and credit providers (*see above*).

AB 1756 (Tucker), as amended June 9, 1993, would have prohibited state, city, and county governments from contracting for services with financial institutions with $100 million dollars or more in assets unless those companies file Community Reinvestment Act reports annually with the Treasurer. The Treasurer would have been required to annually submit a report to the legislature and to make summaries available to the public. These reports would have included specified information regarding the nature of the governance of the companies, and their lending and investment practices, with regard to race, ethnicity, gender, and income of the governing boards and of the recipients of loans and contracts from the institutions. This bill died in committee.

LITIGATION

At this writing, the California Supreme Court is still reviewing the Second District Court of Appeal's decision in ***People v. Charles H. Keating***, 16 Cal. App. 4th 280 (1993). Keating was found guilty on 17 counts for defrauding investors by encouraging them to purchase worthless junk bonds instead of government-insured certificates; in his appeal (No. S033855), Keating contends that he never personally interacted with investors, and that criminal liability for violations of Corporations Code sections 25401 and 25540 is limited to direct solicitors and sellers. *[14:2&3 CRLR 143–44]* The action has been fully briefed; at this writing, however, oral argument has not yet been scheduled.

DEPARTMENT OF INDUSTRIAL RELATIONS

CAL-OSHA

Executive Director:
Steven Jablonsky
(916) 322-3640

California's Occupational Safety and Health Administration (Cal-OSHA) is part of the cabinet-level Department of Industrial Relations (DIR). The agency administers California's programs ensuring the safety and health of California workers.

Cal-OSHA was created by statute in October 1973 and its authority is outlined in Labor Code sections 140-49. It is approved and monitored by, and receives some funding from, the federal OSHA. Cal-OSHA's regulations are codified in Titles 8, 24, and 26 of the California Code of Regulations (CCR).

The Occupational Safety and Health Standards Board (OSB) is a quasi-legislative body empowered to adopt, review, amend, and repeal health and safety orders which affect California employers and employees. Under section 6 of the Federal Occupational Safety and Health Act of 1970, California's safety and health standards must be at least as effective as the federal standards within six months of the adoption of a given federal standard. Current procedures require justification for the adoption of standards more stringent than the federal standards. In addition, OSB may grant interim or permanent variances from occupational safety and health standards to employers who can show that an alternative process would provide equal or superior safety to their employees.

The seven members of the OSB are appointed to four-year terms. Labor Code section 140 mandates the composition of the Board, which is comprised of two members from management, two from labor, one from the field of occupational health, one from occupational safety, and one from the general public. At this writing, OSB is functioning with a labor representative vacancy.

The duty to investigate and enforce the safety and health orders rests with the Division of Occupational Safety and Health (DOSH). DOSH issues citations and abatement orders (granting a specific time period for remedying the violation), and levies civil and criminal penalties for serious, willful, and repeated violations. In addition to making routine investigations, DOSH is required by law to investigate employee complaints and any accident causing serious injury, and to make follow-up inspections at the end of the abatement period.