Court on August 4, 1992, challenges BofA's new policy which requires that customer disputes over deposit and credit card accounts be sent to binding arbitration. *[12:4 CRLR 140]* The plaintiffs in the suit consist of four BofA customers, Consumer Action of San Francisco, and the California Trial Lawyers Association; they seek a preliminary injunction blocking enforcement of the policy, which they claim violates the California Constitution, the Consumer Legal Remedies Act, and the Unfair Business Practices Act. Plaintiffs, who are also seeking declaratory relief, are represented by the law firm of Sturdevant & Sturdevant. Both sides have filed motions for summary judgment; at this writing, a hearing is set for June 3. If necessary, trial is set for the first week of July.

In a related note, a few months after BofA instituted its binding arbitration requirement, Wells Fargo introduced its own version of the plan. Wells Fargo's version is essentially the same as BofA's, except that current customers are being given a thirty-day period in which to "opt out" of the arbitration agreement, whereas BofA customers were notified of the change by letter which stated that continued use of their BofA account would imply consent to the arbitration terms. Wells Fargo's plan does not really offer an "escape clause," though, as the customers' only real option is to terminate their account before being forced to join the arbitration program. First Interstate Bank is also planning to unveil an arbitration program, and other California banks could follow suit. The outcome of *Badie v. BofA* will likely have a significant impact on the future of arbitration agreements in the banking industry.

DEPARTMENT OF CORPORATIONS

Acting Commissioner:
Brian A. Thompson
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The Department of Corporations (DOC) is a part of the cabinet-level Business, Transportation and Housing Agency and is empowered under section 25600 of the California Code of Corporations. The Commissioner of Corporations, appointed by the Governor, oversees and administers the duties and responsibilities of the Department. The rules promulgated by the Department are set forth in Chapter 3, Title 10 of the California Code of Regulations (CCR).

The Department administers several major statutes. The most important is the Corporate Securities Act of 1968, which requires the "qualification" of all securities sold in California. "Securities" are defined quite broadly, and may include business opportunities in addition to the traditional stocks and bonds. Many securities may be "qualified" through compliance with the Federal Securities Acts of 1933, 1934, and 1940. If the securities are not under federal qualification, the commissioner must issue a "permit" for their sale in California.

The commissioner may issue a "stop order" regarding sales or revoke or suspend permits if in the "public interest" or if the plan of business underlying the securities is not "fair, just or equitable."

The commissioner may refuse to grant a permit unless the securities are properly and publicly offered under the federal securities statutes. A suspension or stop order gives rise to Administrative Procedure Act notice and hearing rights. The commissioner may require that records be kept by all securities issuers, may inspect those records, and may require that a prospectus or proxy statement be given to each potential buyer unless the seller is proceeding under federal law.

The commissioner also licenses agents, broker-dealers, and investment advisors. Those brokers and advisors without a place of business in the state and operating under federal law are exempt. Deception, fraud, or violation of any regulation of the commissioner is cause for license suspension of up to one year or revocation.

The commissioner also has the authority to suspend trading in any securities by summary proceeding and to require securities distributors or underwriters to file all advertising for sale of securities with the Department before publication. The commissioner has particularly broad civil investigative discovery powers; he/she can compel the deposition of witnesses and require production of documents. Witnesses so compelled may be granted automatic immunity from criminal prosecution.

The commissioner can also issue "desist and refrain" orders to halt unlicensed activity or the improper sale of securities. A willful violation of the securities law is a felony, as is securities fraud. These criminal violations are referred by the Department to local district attorneys for prosecution.

The commissioner also enforces a group of more specific statutes involving similar kinds of powers: Franchise Investment Statute, Credit Union Statute, Industrial Loan Law, Personal Property Brokers Law, Health Care Service Plan Law, Escrow Law, Check Sellers and Cashers Law, California Commodity Law, Securities Depositor Law, California Finance Lenders Law, and Security Owners Protection Law.

In January, Governor Wilson appointed then-DOC Commissioner Thomas Sayles to serve as Secretary of the Business, Transportation and Housing Agency. Wilson appointed DOC chief deputy Brian Thompson to serve as Acting Commissioner while a permanent replacement is being selected.

MAJOR PROJECTS

DOC Issues Investor Alert. On April 13, DOC issued a news release warning investors that pitchmen and con artists are targeting investors seeking to receive a higher return on their investments than certificates of deposit (CDs) now provide. In cooperation with the North American Securities Administrators Association and the Council of Better Business Bureaus, DOC issued an "Investor Alert" fact sheet entitled *CD Alternatives—Making the Right Choice* to inform investors of advantages and disadvantages of investing in CD alternatives. According to Acting Commissioner Brian Thompson, because interest rates on bank accounts and CDs are at historic lows, many individuals are vulnerable to banks, brokers, and others offering them investments with potentially higher returns; however, Thompson noted that consumers are often not told about the risks that may be involved or about their ability to bear losses of principal as well as interest.

According to the Investor Alert, investors are being offered a wide array of CD alternatives, such as stocks, mutual funds, corporate bonds, collateralized mortgage obligations, foreign CDs, and savings bonds; because many of these instruments are offered in banks and in subsidiaries of banks, consumers may mistakenly believe that they are insured in the same way that bank deposits are insured.

DOC Cracks Down on Illegal Futures Contracts. On January 11, then-DOC Commissioner Thomas Sayles announced a series of administrative, civil, and criminal actions against 21 companies and 24 individuals selling illegal futures contracts in gold, silver, and foreign currencies, primarily to members of the Chinese, Vietnamese, and Korean communities in Los Angeles and San Francisco. According to Sayles, the illegal activity constitutes "affinity group fraud," in which members of a certain racial or ethnic group lure others of that group into scams.

According to DOC, investors and investigators described sophisticated sales pitches in these offerings which promised profits of 40–150% through a network of traders operating in Hong Kong, Tokyo, Sydney, Singapore, Frankfurt, Zurich, London, and Chicago; investors were invited to make down payments of 15% for futures contracts in gold, silver, British pounds, Deutschmarks, Swiss francs, Japanese yen, and Australian and Canadian dollars, which would be managed for them by account executives to whom they gave powers of attorney. Investigators alleged that many investors were originally solicited as sales agents, and were told that they had to both invest and bring in new investors in exchange for the opportunity to learn the international trading techniques which the companies utilized. Once in the company, sales agents made huge commissions by "churning" their customers, or executing hundreds of trades per month merely to generate commissions.

According to Sayles, the offerings were filled with red flags that a sophisticated investor would have immediately detected, such as promises of big profit with no risk, discretionary trading accounts, overseas trades that the investor has no way of understanding or verifying, invitations to bring in family and friends, companies changing names and addresses while the characters and products stayed the same, and secret formulas for predicting market trends.

Regulatory Action Under the Corporate Securities Law. On March 12, the Commissioner published notice of his intent to withdraw a pending rulemaking proposal regarding section 260.105.11, Title 10 of the CCR. *[13:1 CRLR 81]* Instead of previously-noticed amendments, the Commissioner now proposes to amend section 260.105.11 to limit the exemption for non-issuer trading of foreign-country issuer securities to those issuers currently filing with the Securities and Exchange Commission information and reports pursuant to section 15(d) of the Exchange Act; those securities appearing in the most recent Federal Reserve Board list of Foreign Margin Stocks; and those issuers not subject to the reporting requirements of section 13 or 15(d) of the Securities Act of 1934 where the issuer meets certain "worldwide" issuer requirements, as specified.

Under the proposed amendments to section 260.105.11, the Commissioner would no longer review the laws of a foreign country to determine whether they provide substantially similar protection to investors as provided by the Exchange Act. If the proposed amendments are adopted, those securities of foreign private issuers which are listed on any stock or securities exchange in Japan, as well as those securities listed on the Manila Stock Exchange, the Tel Aviv Stock Exchange, Limited, and the Australian Associated Stock Exchanges, will be no longer able to rely on the trading exemption under section 260.105.11, unless the new proposed requirements are met or unless another exemption from qualification is available under the Corporate Securities Law of 1968. The current exemption for securities exempted from the provisions of section 12(g) of the Exchange Act under SEC Rule 12g3-2(b)(1) would also be eliminated. The Commissioner received public comment on these proposed regulatory changes until May 14; no public hearing is scheduled at this writing.

On March 1, the Office of Administrative Law (OAL) approved DOC's amendments to sections 260.102.10.1, 260.102.15, and 260.105.13, Title 10 of the CCR, which provide for exemptions from the qualification requirements for resales to qualified institutions. *[13:1 CRLR 81]*

At this writing, DOC is still reviewing comments received regarding its proposal to amend sections 260.110, 260.110.2, and 260.113, and to adopt new section 260.113.1, Title 10 of the CCR. Among other things, these proposed changes would allow a small company application for qualification under Corporations Code section 25113(b)(2); require an application under Corporations Code section 25113(b)(2) to be signed by each member of the small company applicant's board of directors; and specify the Small Company Offering Registration Form (Form C-7), based on the Form U-7 as adopted by the North American Securities Administrators Association. *[13:1 CRLR 81]*

Regulatory Action Under the Health Care Service Plan Act. On April 2, the Commissioner published notice of his intent to amend section 1300.67.13(b), Title 10 of the CCR, to conform the regulation to the 1989 and 1990 changes in federal law with respect to Consolidation Omnibus Budget Reconciliation Act of 1987 (COBRA) Continuation Coverage and Medicare Secondary Payor rules, which provide that the order of benefits determination rules are intended to work sequentially, so that one works one's way down to the first rule that applies. The Commissioner proposes to amend section 1300.67.13(b)(4) to clarify that the first rule that applies to the situation is to be used for determining coverage. Section 1300.67.13 (b) (4)(A) would be amended to incorporate the Medicare Secondary Payor rules into the first order of benefit relating to non-dependents. Section 1300.6713(b)(4) (C)–(E) would be amended to determine the order of benefits for the dependent child whose parents are separated or divorced. Proposed new sections 1300.67.13(b)(4)(F)–(G) would set forth the rules for active/inactive employees, and proposed section 1300.67.13(b) (4)(H) would provide for the order of coverage when a person is covered under both a state of federal plan and another group health plan. The Commissioner received public comment on these proposed changes until May 28; no public hearing is scheduled as of this writing.

On February 22, the Commissioner denied a petition submitted by the California Association of HMOs, Inc., which requested that DOC amend section 1300.67.8, Title 10 of the CCR, to require health care providers under a capitation or other risk-sharing contract to submit financial statements to the health care service plan. The Commissioner denied the petition on the basis that the Knox-Keene Health Care Service Plan Act does not authorize DOC to adopt such a rule.

DOC Rulemaking Under the Franchise Investment Law. DOC is still reviewing public comments received in response to its proposed amendments to section 310.100.2, Title 10 of the CCR, regarding the exemption from the registration requirements of Corporations Code section 31110 for the offer and sale of a franchise if certain conditions are met. DOC is also still reviewing public comments received in response to its proposed changes to section 310.114.1, Title 10 of the CCR, which would include guidance on how to describe the franchisee and the franchisor(s) in an offering circular. *[13:1 CRLR 81–82]*

DOC Rulemaking Under the Escrow Law. On January 21, the Commissioner responded to a petition filed by the Escrow Institute of California requesting several changes in the way DOC administers the Escrow Law. Among other things, the Commissioner denied requests to eliminate the regulatory examinations for escrow agents and to allow examination costs to be payable in monthly installments. However, the Commissioner agreed to continue to immediately investigate reports of unlicensed activity; resume sending the escrow industry notices regarding new license applications, on a test basis; review the manner in which licensees advertise that they are covered by the Escrow Agents Fidelity Corporation, which is a private insurance fund; and consider allowing licensees to advertise that they are bonded.

Regulatory Action Under the Credit Union Law. On March 1, OAL approved

DOC's changes to section 976, Title 10 of the CCR, which clarify language setting forth exemptions from the calculation of the 40% limitation on real estate lending. *[13:1 CRLR 80]*

On February 26, the Commissioner renoticed his intent to repeal existing section 909 and adopt a new section 909, Title 10 of the CCR, which would clarify when bond or insurance coverage is deemed "commensurate with risks involved." DOC originally proposed this action in December 1991 *[12:1 CRLR 114]*, but failed to complete the regulatory process within the one-year maximum period as required by Government Code section 11346.4. The new version of section 909 is substantially similar to the originally proposed version, except that the requirement in subdivision (a) that the bond form or insurance policy by approved by rule or regulation of the National Credit Union Administration (NCUA) has been changed to require that the bond form or insurance policy be approved in writing by the NCUA; and the requirement in subdivision (b)(2) that the bond form or insurance policy provide coverage for violations of consumer credit protections laws has been deleted. DOC accepted public comments on the proposal until April 23; at this writing, the action awaits review and approval by OAL.

LEGISLATION

AB 729 (Speier). Existing law provides for the licensing of securities broker-dealers and the regulation of agents by the Commissioner of Corporations. Existing law authorizes the Commissioner to take disciplinary action against a broker-dealer if, among other things, the broker-dealer is subject to any order of the Securities and Exchange Commission, the securities administrator of another state, a securities association, the Commodity Futures Trading Commission, or board of trade taking certain disciplinary action. As amended April 29, this bill would provide for discipline if the broker-dealer is or has been subject to any order of those entities. The bill would also authorize discipline for a violation of the California Commodity Law of 1990, and authorize the Commissioner to immediately revoke the certificate of a broker-dealer who fails to comply with an order of the Commissioner, except as specified. This bill would make similar parallel changes applicable to investment advisers.

This bill would require the Commissioner to make available to the public information with respect to the licensure status or disciplinary record of a broker-dealer or agent. This bill would, except in specified circumstance, require a broker-dealer or agent to deliver a written notice to any client upon initial contact, stating that the above-specified information may be obtained from DOC. This bill would require the Commissioner to provide to the public, at a reasonable charge, copies of the above-specified information and would provide that no liability or cause of action shall exist against the state, the Department, or specified employees of the Department for the release of false or unauthorized information, unless that release is done with knowledge or malice.

The Public Records Act (PRA) provides that with certain exceptions, agency records, as defined, are open to inspection by the public, and exempts from disclosure records contained in or related to specified applications, reports, communications, or information filed with or prepared by or on behalf of any state agency responsible for the regulation or supervision of the issuance of securities. The PRA provides that whenever a state or local agency discloses a public record which is otherwise exempt from disclosure, to any member of the public, that disclosure constitutes a waiver of the exemption, unless otherwise specified. This bill would provide that the above waiver of exemption provision does not apply to records relating to any person subject to DOC's jurisdiction, if the disclosures are made to the person who is the subject of the records for the purpose of corrective action by that person, or if a corporation, to an officer, director, or other key personnel of the corporation for the purpose of corrective action, or to any other person to the extent necessary to obtain information from that person for the purpose of an investigation by the Department. This bill would also provide that any information reported to the North American Securities Administrators Association/National Association of Securities Dealers' Central Registration Depository, and compiled as disciplinary records which are made available to DOC through a computer system, shall constitute a public record. *[A. W&M]*

SB 479 (Beverly). Under existing law, before any corporation issues shares of any class or series of which the rights, preferences, and restrictions or number of shares or designation of shares are fixed by resolution of the board, an officers' certificate setting forth the resolution and other information shall be executed and filed. As amended May 19, this bill would additionally require, where the rights, preferences, and restrictions contain a supermajority vote provision, that the officers' certificate state that this provision has been approved by the shareholders.

Existing law sets forth various requirements applicable after January 1, 1989, to a corporation with outstanding shares held of record by 100 or more persons for amendment of the articles or a certificate of determination containing a supermajority vote requirement. This bill would provide that these provisions shall not apply to a corporation which files an amendment of articles or certificate of determination, on or after January 1, 1994 if, at the time of filing, the corporation has no class of equity securities registered under the Securities Exchange Act of 1934, as specified, outstanding shares of more than one class or series of stock, no supermajority vote provision, as specified, and outstanding securities held of record by fewer than 300 persons. *[A. F&I]*

SB 128 (Beverly). Existing law provides that before the National Association of Securities Dealers, Inc. (NASD) automated quotation system is certified by the Commissioner pursuant to specified provisions of current law, the Commissioner shall determine and conclude that NASD has adopted and obtained Securities and Exchange Commission approval of corporate governance standards, including voting rights, which are substantially similar to the corporate governance standards in effect on the date of application by the association for either the New York or the American Stock Exchange. Existing law also provides that the certification of the interdealer quotation system of NASD shall remain in effect only until January 1, 1994, and shall be subject to applicable decertification proceedings. As introduced January 25, this bill would repeal this provision of law and would state legislative intent that a national securities exchange or interdealer quotation system seeking certification from the Commissioner of Corporations adopt corporate governance listing standards or criteria consistent with the standards or criteria adopted by previously certified entities and in addition to specified requirements. This bill would also state legislative intent that previously certified entities routinely review the quantitative and the qualitative listing, delisting, and maintenance standards or criteria to enhance investor protection. *[A. F&I]*

SB 955 (Presley). The Corporate Securities Act of 1968 provides that it is unlawful for any person to offer or sell in this state any security in an issuer transaction unless the sale is qualified or exempted. As amended April 27, this bill would provide that the offer or sale of such a security in a manner that varies or differs from, exceeds the scope of, or fails to conform with a condition of qualification shall be deemed to be an unqualified offer or sale.

Existing law provides for certain fines and penalties relative to willful violations of certain provisions of the Act. This bill would increase those fines and provide that any person having responsibility and control over activities which constitute specified violations shall be subject to certain criminal provisions to the same extent as offerors, buyers, and sellers. *[S. Appr]*

SB 115 (Beverly) and **SB 1118 (Rogers)**. Under the Corporate Securities Law of 1968, it is unlawful for any person to offer or sell in this state any security unless the sale has been qualified or unless the security or transaction is exempted. Included among exempted transactions is any offer of a security for which a registration statement under the federal Securities Act of 1933 has been filed but has not yet become effective, subject to certain conditions. These bills would additionally exempt any offer of a security for which an offering statement under Regulation A of the Securities Act of 1933 has been filed but has not yet been qualified.

Existing law authorizes the Commissioner to charge and collect a specified fee for filing a small company application for qualification of securities by permit; existing law permits the Commissioner to charge an additional fee not to exceed $1,000 if the actual costs of processing the application exceed the filing fee. SB 115 would make that provision applicable in cases where the costs, rather than the actual costs of processing the application fee, exceed the filing fee and permit the Commissioner, in determining the costs, to use the estimated average hourly cost for all persons processing applications for the fiscal year.

Existing law authorizes the Commissioner to charge a fee for any examination, audit, or investigation in connection with specified activities based upon actual compensation and expenses. SB 115 would instead base this fee upon compensation and expenses, rather than actual compensation and expenses, and authorize the Commissioner, in determining the costs associated with an examination, audit, or investigation, to use the estimated average hourly cost for all persons performing examinations, audits, or investigations for the fiscal year. *[A. F&I; S. BC&IT]*

SB 666 (Beverly). Existing law permits certain securities to be qualified by permit if the application is a small company application and meets certain requirements. As introduced March 3, this bill would revise those requirements by specifically requiring the Commissioner to adopt rules containing specified requirements. Among other things, the bill would set the minimum stock price at $2 instead of $5, and incorporate by reference Form U-7 of the North American Securities Administrators Association, and associated instructions. *[S. BC&IT]*

AB 2025 (Bowen). Existing law provides that there is no personal liability to a third party for monetary damages on the part of a volunteer director or volunteer executive officer of a nonprofit public benefit corporation or nonprofit religious corporation caused by the director's or officer's negligent act or omission in the performance of that person's duties if certain conditions are met, including the condition that the damages are covered pursuant to a liability insurance policy or, if not covered by insurance, that the directors of the corporation and the person made all reasonable efforts in good faith to obtain available liability insurance. As introduced March 5, this bill would repeal these provisions of law and instead provide that, except for listed persons, no person may bring an action against a director or officer of a nonprofit public benefit corporation or a nonprofit religious corporation, based on specified violations of law or on any other act or omission by a person arising out of, or reasonably believed to be in the course of, his/her capacity as a director or officer. *[A. Jud]*

SB 687 (Boatwright), as amended April 28, would authorize a foreign professional corporation to qualify as a foreign corporation to transact interstate business, and provide for the rendering of professional services by persons who are licensed to render those services in the jurisdiction in which the services are rendered. *[S. Appr]*

SB 930 (Killea), as introduced March 4, and **SB 469 (Beverly)**, as amended April 12, would—among other things—enact the California Limited Liability Company Act, authorizing a limited liability company to engage in any lawful business activity; set forth the duties and obligations of the managers of a limited liability company; and establish requirements and procedures for membership interests in limited liability companies, including voting, meeting, and inspection rights. *[S. Jud; S. Jud]*

AB 2063 (Weggeland). The General Corporation Law permits California corporations to merge with other corporations but does not contain provisions providing for the merger of California corporations with limited partnerships. As amended April 22, this bill would permit those mergers, provided that the surviving entity of a merger is either a corporation or a limited partnership; and require a corporation and a limited partnership that desire to merge to comply with specified requirements. *[A. Floor]*

SB 545 (Killea), as introduced March 1, would require the Commissioner to develop and maintain a registry of qualified women eligible to sit on boards of directors of corporations; the bill would require the initial registry to be completed no later than January 1, 1995. *[S. Appr]*

AB 1057 (Conroy). Existing law requires applicants for an escrow agent's license to file, and escrow agents to maintain, a bond. Under existing law, an applicant or licensee may obtain an irrevocable letter of credit approved by the Commissioner of Corporations in lieu of the bond. As introduced March 2, this bill would instead permit an applicant or licensee to obtain an irrevocable letter of credit in a form which shall be approved by the Commissioner in lieu of the bond. The bill would also provide that the Commissioner shall be entitled to recover the administrative costs that are specific to processing claims against irrevocable letters of credit. *[S. BC&IT]*

AB 1031 (Aguiar). Existing escrow law provides that any advertising referring to the Fidelity Corporation shall state in type not smaller than the largest size of type used in the body of the advertisement: "Escrow Agents' Fidelity Corporation is a private corporation and is not an agency or other instrumentality of the State of California." As amended April 26, this bill would instead provide for a more comprehensive disclosure statement. It would also require escrow companies to provide certain condensed financial statements, as prescribed by rule or order of the DOC Commissioner. *[A. Floor]*

AB 733 (Conroy). Existing law prohibits any person who has been convicted of specified criminal violations, or held liable in a civil action by final judgment, or administrative action by any public agency for certain violations within the past ten years, from serving in any capacity as an officer, director, stockholder, trustee, agent, or employee of an escrow agency, or in any position involving any duties with an escrow agent in the state. Existing law requires any person who seeks employment by, an ownership interest in, or other participation in the business of a licensed escrow agent to authorize the Fidelity Corporation and the Commissioner of Corporations, or both, to have access to that person's state summary criminal history information. Existing law contains various related provisions. As introduced February 24, this bill would make those prohibitions upon holding escrow positions applicable to criminal convictions, pleas of nolo contendere to spec-

ified crimes within the past ten years, and to civil and administrative judgments within the past seven years based on specified conduct. The bill would delete certain criminal charges and provide that an offense does not include a conviction for which the person has obtained a certificate of rehabilitation from a court of competent jurisdiction as allowed by the Penal Code or a similar certificate obtained in a foreign jurisdiction.

Existing law requires the Commissioner to notify the escrow agent of information that employment would be in violation of those provisions. This bill would require written notice to the escrow agent and the person seeking employment.

Existing law authorizes the Commissioner to impose discipline against certain persons connected with escrow agents if the person has been convicted of or pleaded nolo contendere to a crime, or held liable in a civil action or administrative action involving findings or certain criminal conduct. This bill would instead authorize discipline if the person has been convicted of or pleaded nolo contendere to a crime or been held liable in a civil action by final judgment, or any administrative judgment by any public agency, if the crime or civil or administrative judgment is one of the offenses described above or any other offense reasonably related to the qualifications, functions, or duties of a person engaged in the escrow business. *[A. Floor]*

AB 1125 (Johnson), as amended April 12, would require the Commissioner to conduct an inspection and examination of a new escrow agent licensee within six months of licensure. The costs of the inspection and examination would be paid by the licensee to the Commissioner. *[S. BC&IT]*

AB 1923 (Peace). Existing law provides that credit unions must obtain or have insurance pursuant to Title II of the Federal Credit Union Act, or a guaranty of shares provided by the California Credit Union Share Guaranty Corporation, or a form of comparable insurance or guaranty of share acceptable to the Corporations Commissioner for the purpose of insuring or guaranteeing its members' share accounts. As introduced March 5, this bill would provide that credit unions shall obtain insurance as provided for by Title II of the Federal Credit Union Act. This bill would provide that, on or after January 1, 1994, every credit union applying for a certificate to act as a credit union must demonstrate that it has applied for and obtained Title II insurance. By January 1, 1995, every credit union must obtain Title II insurance. Credit unions which have not obtained that insurance by July 1, 1995, or have ceased to maintain it after that date, shall proceed to liquidate or merge with another credit union. *[A. F&I]*

AB 1533 (Tucker). Existing law limits check cashers' charges for cashing a payroll check with identification to 3% and without identification to 3.5%, or $3, whichever is greater. As introduced March 4, this bill would reduce these maximum charges to 1% for cashing a payroll check with identification and 1.5% for cashing a payroll check without identification, or $3, whichever is greater. *[A. F&I]*

AB 573 (Johnson). Existing law authorizes the Commissioner of Corporations to, by rule, order, or regulation, permit loans to be made or entered into at places in California other than designated by an industrial loan company in its certificate of authorization if those loans can be so made consistent with the purposes of the Industrial Loan Law. As introduced February 10, this bill would delete the limitation that the loans be made or entered into at places in California and would additionally make that authorization applicable to loans and obligations solicited and acquired at places other than designated by an industrial loan company in its certificate of authorization, subject to those same conditions. *[A. Floor]*

AB 2079 (Margolin). Under the Knox-Keene Health Care Service Plan Act of 1975, health care service plans (HCSPs) are regulated by the Commissioner of Corporations. Existing law requires a HCSP whose license has been surrendered or revoked to submit to the Commissioner a closing audit report on or before 105 days after the effective date of the surrender or revocation. As amended April 15, this bill would instead require a HCSP to submit to the Commissioner a closing audit report on or before 105 days after notice of the surrender or revocation. It would prohibit the Commissioner from consenting to a surrender and prohibit an order of revocation as being considered final until the closing audit report has been filed and all concerns raised by the Commissioner therefrom have been resolved by the plan. It would also authorize the Commissioner to waive this requirement for good cause. The bill would authorize the Commissioner to impose, by order, an administrative penalty on any person who fails, upon written demand of the Commissioner and within the time specified in the demand, to pay any fee, amendment, or report required by the Act, or to maintain a prescribed bond, deposit, insurance, or guarantee arrangements. It would also specify the procedure for the imposition of this administrative penalty.

Existing law authorizes the Commissioner to summarily suspend or revoke the license of a HCSP under prescribed conditions. This bill would, in addition, authorize summary suspension or revocation for failure of a plan to maintain a deposit, insurance, or guaranty arrangement required by the Act.

Under existing law, the Act contains comprehensive provisions regulating HCSP contracts that supplement Medicare. Existing law exempts a federally qualified health maintenance organization from these provisions. Under existing law, the willful violation of the Act or any rule or order thereunder is a misdemeanor. This bill would delete the exemption for federally qualified HMOs, and instead exempt from these comprehensive provisions regulating HCSPs a contract or other arrangement of a HCSP that offers benefits under federal law or under a demonstration project authorized pursuant to federal law. *[S. InsCl&Corps]*

AB 2306 (Margolin), as amended May 19, would add to the acts that constitute grounds for HCSP disciplinary action the failure of a plan to correct prescribed deficiencies identified by the Commissioner. *[A. Floor]*

AB 2002 (Woodruff), as amended April 14, would be known as the "Filante Health Care Act," authorizing HCSPs, nonprofit hospital service plans, and disability insurers to provide rate incentives for covered individuals or enrollees, as the case may be, to adopt "healthful lifestyles," as prescribed, with the rate incentives based on actuarial considerations related to the differences in lifestyle. The bill would require the Commissioner of Corporations to adopt guidelines and provide the Franchise Tax Board with a copy of those guidelines by June 30, 1994, and permit the Commissioner to adopt regulations defining a "healthful lifestyle" for HCSPs. *[A. Health]*

SB 719 (Craven). Existing law provides that no HCSP, including a specialized HCSP, shall request reimbursement for overpayment or reduce the level of payment to a provider based solely on the allegation that the provider has entered into a contract with any other licensed HCSP for participation in a benefit plan that has been approved by the Commissioner. As amended May 17, this bill would provide instead that no specialized HCSP that provides or arranges for dental services shall request reimbursement for overpayment or reduce the level of payment to a provider based on the that the provider has entered into a contract with any other HCSP for participation in a supplemental dental benefit plan that has been

approved by the Commissioner. *[S. InsCl&Corps]*

LITIGATION

On January 6, former savings and loan boss Charles Keating and his son, Charles Keating III, were convicted by a federal jury on charges of racketeering, bank and securities fraud, conspiracy, and the interstate transportation of stolen goods. *[13:1 CRLR 82]* The elder Keating, who is already serving a ten-year state sentence for defrauding 25,000 investors out of $268 million by persuading them to buy worthless junk bonds instead of government-insured certificates, was found guilty on all 73 counts brought against him; his son was found guilty of all 64 counts brought against him. Although sentencing was set for March 15, that date has been postponed; at this writing, sentencing is expected to take place in July.

DEPARTMENT OF INSURANCE

Commissioner: John Garamendi
(415) 904-5410
Toll-Free Complaint Number:
1-800-927-4357

Insurance is the only interstate business wholly regulated by the several states, rather than by the federal government. In California, this responsibility rests with the Department of Insurance (DOI), organized in 1868 and headed by the Insurance Commissioner. Insurance Code sections 12919 through 12931 set forth the Commissioner's powers and duties. Authorization for DOI is found in section 12906 of the 800-page Insurance Code; the Department's regulations are codified in Chapter 5, Title 10 of the California Code of Regulations (CCR).

The Department's designated purpose is to regulate the insurance industry in order to protect policyholders. Such regulation includes the licensing of agents and brokers, and the admission of insurers to sell in the state.

In California, the Insurance Commissioner licenses approximately 1,300 insurance companies which carry premiums of approximately $63 billion annually. Of these, 600 specialize in writing life and/or accident and health policies.

In addition to its licensing function, DOI is the principal agency involved in the collection of annual taxes paid by the insurance industry. The Department also collects more than 170 different fees levied against insurance producers and companies.

The Department also performs the following functions:

(1) regulates insurance companies for solvency by tri-annually auditing all domestic insurance companies and by selectively participating in the auditing of other companies licensed in California but organized in another state or foreign country;

(2) grants or denies security permits and other types of formal authorizations to applying insurance and title companies;

(3) reviews formally and approves or disapproves tens of thousands of insurance policies and related forms annually as required by statute, principally related to accident and health, workers' compensation, and group life insurance;

(4) establishes rates and rules for workers' compensation insurance;

(5) preapproves rates in certain lines of insurance under Proposition 103, and regulates compliance with the general rating law in others; and

(6) becomes the receiver of an insurance company in financial or other significant difficulties.

The Insurance Code empowers the Commissioner to hold hearings to determine whether brokers or carriers are complying with state law, and to order an insurer to stop doing business within the state. However, the Commissioner may not force an insurer to pay a claim—that power is reserved to the courts.

DOI has over 800 employees and is headquartered in San Francisco. Branch offices are located in San Diego, Sacramento, and Los Angeles. The Commissioner directs 21 functional divisions and bureaus.

The Underwriting Services Bureau (USB) is part of the Consumer Services Division, and handles daily consumer inquiries through the Department's toll-free complaint number. It receives more than 2,000 telephone calls each day. Almost 50% of the calls result in the mailing of a complaint form to the consumer. Depending on the nature of the returned complaint, it is then referred to Claims Services, Rating Services, Investigations, or other sections of the Division.

Since 1979, the Department has maintained the Bureau of Fraudulent Claims, charged with investigation of suspected fraud by claimants. The California insurance industry asserts that it loses more than $100 million annually to such claims. Licensees currently pay an annual assessment of $1,000 to fund the Bureau's activities.

MAJOR PROJECTS

Proposition 103—Hit by Courts and Legislature—Hailed by National Consumer Organization. The first several months of 1993 were not good ones for Proposition 103, the insurance rate reform initiative passed by California voters in November 1988. *[9:1 CRLR 74–75]* The initiative, which held its own throughout four years of insurance-industry-financed litigation challenging every conceivable aspect of the measure, suffered a severe blow on February 26 when Los Angeles County Superior Court Judge Dzintra I. Janavs struck down Commissioner Garamendi's rollback regulations. In *20th Century Insurance Company v. Garamendi*, the court agreed with the insurance industry's arguments that the Commissioner is not authorized to set rates; he is authorized only to approve them, and in fact must approve them if they result in a reasonable rate of return for the insurer. Further, Judge Janavs invalidated the Commissioner's generic rollback regulations because they are based in part on historical, industrywide, or average criteria and can have the effect of precluding insurers from introducing evidence of their actual financial condition at company-specific evidentiary hearings (*see* LITIGATION).

Additionally, the legislature—moribund on auto insurance rate reform for years both before and after the passage of Proposition 103—has now gotten into the act by entertaining several bills to amend the initiative and generally reduce the Commissioner's authority over the insurance industry. Although the language of the initiative precludes the legislature from amending it unless the new legislation "furthers its purposes," at least five pending bills would cut back on reforms made by Proposition 103 (*see* LEGISLATION). At the same time, the Second District Court of Appeal continues to consider Judge Janavs' March 1991 decision in *Amwest Surety Insurance Corp. v. Wilson*, in which the court upheld the validity of a bill exempting the surety industry from Proposition 103 as "furthering the purpose" of the proposition. *[11:3 CRLR 133–34]* The Second District's decision is expected to determine the scope of the legislature's authority to amend the embattled initiative.

Meanwhile, the National Insurance Consumer Organization (NICO) released a study in January indicating that Proposition 103 has already saved Californians $4.2 billion, in spite of the general refusal on the part of the insurance industry to refund mandated premium rollbacks. Prior to the passage of Proposition 103, rates in California were the third-fastest-rising in the nation. Since that time, however, rates in California have been largely frozen pending the outcome of the