workers' compensation insurance premiums the employer would have been liable for during the period of time the employer was uninsured; and **SB 1066 (Mello)**, which would have prohibited the issuance of any life insurance policy or certificate, except credit life insurance, life insurance where the death benefit is $25,000 or more, and noncontributory group life insurance, unless the benefit payable at death equals or exceeds the cumulative premiums to be paid for the first ten years, plus interest thereon.

LITIGATION

What started out as a routine insurance industry appeal of a Proposition 103-related loss in court erupted in controversy during the spring. In January, the industry petitioned the California Supreme Court to review the Second District Court of Appeal's decision in ***Amwest Surety Insurance Company v. Wilson***, 20 Cal. App. 4th 1275 (Dec. 8, 1993); in that case, the appellate court struck down a 1990 statute exempting surety companies from the rollback and prior approval provisions of Proposition 103 because it does not "further the purposes" of the initiative and is thus beyond the authority of the legislature. *[14:1 CRLR 108; 13:2&3 CRLR 130; 11:3 CRLR 133–34]*

As usual, numerous insurance companies filed *amicus curiae* briefs in support of the petition. The controversy focuses on the identity of one of the attorneys for *amicus* Surety Company of the Pacific; he is none other than former Governor George Deukmejian, who appointed four of the six sitting Supreme Court justices (one position is vacant at this writing), is a former law partner of Chief Justice Malcolm Lucas, and is the former employer of Justice Marvin Baxter (Baxter served as Deukmejian's appointments secretary). Proposition 103 author Harvey Rosenfield, the Proposition 103 Enforcement Project, and consumer groups and public interest organizations across the state all cried foul, calling on Deukmejian to withdraw as counsel and asserting that, if he does not, a majority of the Supreme Court members have a conflict of interest which requires them to recuse themselves from the decision. The court granted the industry's petition for review on February 24.

The scenario of a former governor who appointed most of the justices returning to appear before his own appointees in a case challenging the validity of a bill he signed is apparently unprecedented. In a press release accompanying his formal request that the Deukmejian-appointed justices recuse themselves from participating in the case, Rosenfield characterized the situation as follows: "The insurance industry has hired former Governor George Deukmejian to convince the California Supreme Court—a majority of which Deukmejian appointed—to uphold the validity of anti-103 legislation sponsored by convicted lobbyist Clay Jackson and signed by Deukmejian in 1990." In addition, Deukmejian accepted campaign contributions from surety insurance companies, including $243,000 from Surety Company of the Pacific. Deukmejian's participation in the case has caused several political observers to conclude that, even if the Deukmejian-appointed justices have no actual conflict of interest, the apparent conflict of interest presented by Deukmejian's appearance (coupled with a recent and well-publicized investigation into Chief Justice Lucas' insurance industry-financed trips to Thailand, Hawaii, and Austria) tarnishes the integrity of the judiciary and suffices to require them to recuse themselves from the case. However, on April 14, the four justices—Malcolm Lucas, Joyce Kennard, Armand Arabian, and Marvin Baxter—denied Rosenfield's request without explanation. And on May 12, the court rejected a last-ditch request by Rosenfield, several public interest organizations, Senator Art Torres, and Assemblymember Burt Margolin to bar Deukmejian from participating in the case. At this writing, the case is being briefed and no date for oral argument has been set.

Another major Proposition 103 case is still pending before the California Supreme Court. The final brief in ***20th Century Insurance Company v. Garamendi***, No. S032502, was filed on August 25, 1993; oral argument has finally been scheduled for June 7. The *20th Century* case is a direct appeal from Los Angeles County Superior Court Judge Dzintra I. Janavs' February 1993 invalidation of the Commissioner's regulations implementing Proposition 103's rollback requirement. *[13:4 CRLR 122; 13:2&3 CRLR 139–40]*

In ***Manufacturers Life Insurance Company, et al. v. Superior Court (Weil Insurance Agency, Real Party in Interest)***, 23 Cal. App. 4th 1629 (Apr. 4, 1994), the First District Court of Appeal held that the Unfair Insurance Practices Act (UIPA), Insurance Code section 790 *et seq.*, and its limited administrative remedy is not the sole vehicle for redress of an unlawful group boycott by insurers, and that an aggrieved plaintiff may pursue state antitrust remedies under the Cartwright Act. However, on May 2, the court decided to rehear the case on its own motion.

Plaintiff Weil was a broker of and consultant on a form of life insurance known as "settlement annuities"; a settlement annuity is an annuity purchased by a liability carrier to fund a structured (periodic payment) settlement in a personal injury action. It was plaintiff's practice to advise and educate injury claimants and their attorneys with information concerning the underlying features of settlement annuities, in particular their actual costs. According to the court, "[s]uch disclosures were inimical to a plan defendants had formed to market settlement annuities as a way for liability carriers to settle injury claims below their cash settlement value." Thus, defendants allegedly coerced and induced suppliers of annuities to stop doing business with plaintiff; as a result, plaintiff's business was destroyed.

Weil brought suit against the insurers, asserting (among other things) statutory claims under the UIPA and two provisions of the Cartwright Act (California's general antitrust law), Business and Professions Code sections 16720 and 16721.5. In the trial court, defendants demurred on the statutory claims, asserting that the Cartwright Act is superseded by the UIPA and that there is no private cause of action under the UIPA; the only remedy for a violation of the UIPA is a cease and desist order issued by the Insurance Commissioner. The trial court sustained the demurrers.

On appeal, the First District reversed, finding nothing in the UIPA which purports to supplant the Cartwright Act "so as to provide the sole basis by which unlawful conduct of the type alleged here may be subjected to legal restraint or may otherwise produce legal consequences." The court noted that the UIPA itself "expresses an affirmative intention and expectation that it will preserve intact existing remedies for insurance industry misconduct," and observed that "[i]f the legislature wished to exempt the insurance industry from the Cartwright Act, it knew full well how to do so." At this writing, the rehearing is pending.

DEPARTMENT OF REAL ESTATE

Commissioner: Clark E. Wallace
(916) 739-3684

The Real Estate Commissioner is appointed by the Governor and is the chief officer of the Department of Real Estate (DRE). DRE was established pursuant to Business and Professions Code section 10000 *et seq.*; its regulations appear in Chapter 6, Title 10 of the California Code of Regulations (CCR). The

commissioner's principal duties include determining administrative policy and enforcing the Real Estate Law in a manner which achieves maximum protection for purchasers of real property and those persons dealing with a real estate licensee. The commissioner is assisted by the Real Estate Advisory Commission, which is comprised of six brokers and four public members who serve at the commissioner's pleasure. The Real Estate Advisory Commission must conduct at least four public meetings each year. The commissioner receives additional advice from specialized committees in areas of education and research, mortgage lending, subdivisions and commercial and business brokerage. Various subcommittees also provide advisory input.

DRE primarily regulates two aspects of the real estate industry: licensees (as of September 1993, 255,158 salespersons and 115,974 brokers, including corporate officers) and subdivisions. Certified real estate appraisers are not regulated by DRE, but by the separate Office of Real Estate Appraisers within the Business, Transportation and Housing Agency.

License examinations require a fee of $25 per salesperson applicant and $50 per broker applicant. Exam passage rates averaged 56% for salespersons and 48% for brokers (including retakes) during the 1991–92 fiscal year. License fees for salespersons and brokers are $120 and $165, respectively. Original licensees are fingerprinted and license renewal is required every four years.

In sales, or leases exceeding one year in length, of any new residential subdivisions consisting of five or more lots or units, DRE protects the public by requiring that a prospective purchaser or tenant be given a copy of the "public report." The public report serves two functions aimed at protecting purchasers (or tenants with leases exceeding one year) of subdivision interests: (1) the report discloses material facts relating to title, encumbrances, and related information; and (2) it ensures adherence to applicable standards for creating, operating, financing, and documenting the project. The commissioner will not issue the public report if the subdivider fails to comply with any provision of the Subdivided Lands Act.

The Department publishes three regular bulletins. The *Real Estate Bulletin* is circulated quarterly as an educational service to all current licensees. The *Bulletin* contains information on legislative and regulatory changes, commentaries, and advice; in addition, it lists names of licensees who have been disciplined for violating regulations or laws. The *Mortgage Loan Bulletin* is published twice yearly as an educational service to licensees engaged in mortgage lending activities. Finally, the *Subdivision Industry Bulletin* is published annually as an educational service to title companies and persons involved in the building industry.

DRE publishes numerous books, brochures, and videos relating to licensee activities, duties and responsibilities, market information, taxes, financing, and investment information. In July 1992, DRE began offering one-day seminars entitled "How to Operate a Licensed Real Estate Business in Compliance with the Law." This seminar, which costs $10 per attendee and is offered on various dates in a number of locations throughout the state, covers mortgage loan brokering, trust fund handling, and real estate sales.

The California Association of Realtors (CAR), the trade association joined primarily by agents and brokers working with residential real estate, is the largest such organization in the state. CAR is often the sponsor of legislation affecting DRE. The four public meetings required to be held by the Real Estate Advisory Commission are usually scheduled on the same day and in the same location as CAR meetings.

MAJOR PROJECTS

DRE Proposes New Rulemaking Package. On March 4, DRE published notice of its intent to adopt sections 2717 and 2804, amend sections 2785, 2790.1, 2792.8, 2792.21, 2792.23, 3003, 3007, and 3007.6, and repeal section 3007.5, Title 10 of the CCR. Among other things, the rulemaking package proposes the following changes:

• Business and Professions Code section 10450.6 allows the Commissioner, by regulation, to require that up to 8% of DRE's license fees be credited to the Education and Research Account. New section 2717 would set that amount at 3%.

• Section 2785(a)(20), Title 10 of the CCR, requires the agent for the seller to obtain the express permission of the seller before refunding any part of the offeror's purchase money deposit in a real estate sales transaction after the seller has accepted the offer to purchase. DRE's proposed amendment to section 2785 would repeal subsection (a)(20) and add a suggestion that a licensee obtain written instructions from both parties prior to releasing a deposit.

• Business and Professions Code section 11011 authorizes the Commissioner to provide by regulation for a $100 increase in application fees for original and renewed standard and common interest subdivision public reports. DRE's proposed amendment to section 2790.1 would increase by $100 the maximum application fee and make other nonsubstantive changes.

• Existing regulations provide no minimum standards for provisions in a common interest subdivision association's governing instruments for the administration of an association's civil claims. DRE's proposed amendment to section 2792.8 would establish that the governing instruments for new common interest developments to be sold under authority of a public report must authorize the governing body to institute, defend, settle, or intervene on behalf of the association in litigation, arbitration, mediation, or administrative proceedings in matters pertaining to enforcement of the governing instruments, damage to the common areas, damage to the separate interests which the association is obligated to maintain or repair, or damage to the separate interests which arises out of, or is integrally related to, damage to the common areas or separate interests that the association is obligated to maintain or repair.

• Existing regulations generally prohibit an association's governing body from entering into contracts for terms exceeding one year without membership approval. DRE's proposed amendment to section 2792.21 would authorize a governing body to enter into a contract for up to three years without membership approval so long as the contract is terminable by the association after one year without cause, penalty, or other obligation. The amendments to section 2792.91 would also allow membership assent to actions by the governing body that would otherwise be prohibited to be given by either a vote at a meeting or by ballot without a meeting pursuant to Corporations Code section 7513.

• Existing regulations do not establish minimum standards for the maintenance of specific records and materials by the homeowners' association of a common interest development. DRE's proposed amendment to section 2792.23 would establish such minimum standards.

• Business and Professions Code section 11018.13(a) authorizes the Commissioner to abandon a subdivision public report application after written notice to the subdivider if the data required by Business and Professions Code section 11010 have not been furnished within three years from the date a notice of intention is filed for a subdivision public report. DRE's proposed adoption of section 2804 would authorize DRE to abandon any application for a public report if the data required by

section 11010 have not been furnished within three years from the date a notice of intention is filed, if there has been no progress in the file for six months, and the term of any extension of time has expired. The proposed section would also establish a procedure for notice and for extending the time period.

• DRE's proposed changes to sections 3003, 3007, and 3007.6 would make various technical changes necessitated by recent statutory amendments.

• Section 3007.5 currently provides that all continuing education course offerings approved by DRE prior to the imposition of the requirement that offerings be expressly identified by the sponsor according to the category specified in Business and Professions Code section 10170.5 are "consumer protection" courses. According to DRE, because all currently approved courses have appropriate designations, section 3007.5 is no longer necessary and should be repealed.

DRE conducted a public hearing on the proposes changes on April 27. In response to various comments, the Department revised its proposed language for section 2792.23, and is expected to release the modified text for an additional 15-day public comment period. Following that, the rulemaking file will be submitted to the Office of Administrative Law (OAL) for review and approval.

Rulemaking Update. On January 14, DRE resubmitted proposed section 2790.2, Title 10 of the CCR, to OAL for review; although this proposed section was originally part of a rulemaking package approved by OAL in November 1993 *[14:1 CRLR 109]*, DRE withdrew it for further revisions. Among other things, section 2790.2, regarding conditional public reports, provides that an applicant for a conditional public report shall submit specified information and documents with the applicable filing fee; written notice of the decision to deny issuance of a conditional public report will be mailed to the applicant within five business days after the Commissioner decides not to issue a conditional public report; and the term of a conditional public report will not exceed six months, but the conditional public report may be renewed for one additional six-month period if the Commissioner determines that the requirements for issuance of a public report are likely to be satisfied during the renewal term. On March 1, OAL approved new section 2790.2.

DRE Provides Guidelines for Unlicensed Assistants. Nearly two years ago, DRE established a task force comprised of industry representatives and DRE staff to discuss unlicensed activity and the use of unlicensed assistants by licensees. As a result of the task force's discussions, the Commissioner recently released DRE's guidelines for unlicensed assistants, which are intended to assist licensees in determining which activities may be performed by unlicensed assistants. Among other things, the guidelines provide the following:

• An unlicensed person may make telephone calls to canvass for interest in using the services of a real estate broker; however, should the person answering the call indicate an interest in using the services of a broker, or if there is an interest in ascertaining the kind of services a broker may provide, the person answering the call must be referred to a licensee, or an appointment may be scheduled to enable him/her to meet with a broker or an associate licensee.

• With the principal's consent, an unlicensed person may assist a licensee at an open house intended for the public by placing signs, greeting the public, providing factual information from or handing out preprinted materials prepared by or reviewed and approved for use by the licensee, or arranging appointments with the licensee. During the holding of an open house, only a licensee may show or exhibit the property, discuss the terms and conditions of a possible sale, discuss other features of the property, such as its location, neighborhood or schools, or engage in any other conduct which is used, designed, or structured for solicitation purposes with respect to the property.

• An unlicensed person may make, conduct, or prepare a comparative market analysis subject to the approval of and for use by the licensee.

• An unlicensed person may provide factual information to others from writings prepared by the licensee, provided that he/she may not communicate with the public in a manner which is used, designed, or structured for solicitation purposes with respect to the property.

• An unlicensed person may prepare and design advertising relating to the transaction for which the broker was employed, if the advertising is reviewed and approved by the broker or associate licensee prior to its publication.

• An unlicensed person may accept, account for, or provide a receipt for trust funds received from a principal or a party to the transaction.

DRE Participates in Continuing Education Courses. In March, DRE announced that Commissioner Clark Wallace has implemented a one-year pilot program which will permit certain DRE employees to participate in approved continuing education (CE) courses. Under the program, employee participation is subject to several guidelines, including the following: DRE reserves the right to determine when it will participate in a CE program; the sponsor is to pay all travel and lodging expenses; the subject addressed by DRE staff must be a timely topic of concern to the industry and DRE and within DRE's jurisdiction; the course must not be in direct competition with typical CE courses, and should be of a specialized nature; and DRE participation will be limited to the role as guest speaker to address a special focus area.

All requests for DRE participation in CE courses must comply with the Department's guidelines and should be directed to the employee or section being requested to participate.

DRE Cautions Consumers and Licensees About "No Cost" Loans. According to DRE's Spring 1994 *Mortgage Loan Bulletin*, there has been a proliferation of mortgage loan advertising claiming the availability of "no cost" or "no fee" loans; however, according to DRE, there is no such thing as a "no cost" or "no fee" loan, and advertisements containing such a claim are patently misleading and violate Business and Professions Code section 10235. Further, any broker making a claim of no cost loans in his/her advertising may be subject to disciplinary action or a desist and refrain order by DRE.

According to DRE, the claim of "no cost" loans stems from lenders offering premium-priced loan products which generate a rebate from the lender which is used to pay for some or all of the non-recurring closing costs. Although there may be no out-of-pocket expense to the borrower, this type of loan is far from free or "no cost," as implied in some advertising. In fact, according to DRE, these types of loans may be much more expensive for the borrower than if the closing costs were paid out of pocket. Additionally, DRE contends that most of the ads claiming "no cost" loans fail to mention important restrictions and requirements for obtaining the loan.

DRE encourages licensees with questions about their advertising to submit their advertising for review by using an advertising submittal form available at any DRE office.

LEGISLATION

AB 3272 (Bornstein). Existing law provides that whenever a contract to convey real property, or contemplated to convey real property in the future, contains provisions for binding arbitration, it must

have a specified provision entitled "Arbitration of Disputes" and contain a specified notice. It also provides that whenever a contract or agreement between principals and agents in real property sales transactions contains provisions for binding arbitration, it must have a specified provision entitled "Arbitration of Disputes" and contain a specified notice. As amended May 18, this bill would require all disputes between buyers and sellers, prospective buyers and sellers, and their agents, arising out of real estate contracts, except as specified, to be submitted to mediation before the parties resort to arbitration or court action, where the contract does not contain an arbitration or mediation clause or a clause providing for some other form of alternative dispute resolution (ADR). The bill would specify that this mediation requirement does not prevent the filing of an action to prevent the applicable statute of limitations from running, as long as it is not filed more than ninety days prior to the expiration of this period, or to seek specified relief. The bill would also provide for the tolling of the statute of limitations during the mediation proceedings. The bill would require any agreement arising out of mediation to be signed by the parties to the agreement.

This bill would, among other things, require specified disclosures regarding proposed mediators; estop a party that refuses to mediate in good faith from asserting a failure to mediate as a defense; provide that an action based upon a dispute subject to these mediation requirements is exempt from submission to specified mediation or arbitration pursuant to contract or existing law; permit a court to excuse any additional party to the dispute from mediation, as specified; prohibit a court from considering declarations or findings by a mediator, except as specified; and set forth a procedure for court confirmation of the agreement.

This bill is sponsored by the California Association of Realtors (CAR), which contends that requiring mediation of disputes arising from contracts to convey real property as a prerequisite to arbitration or litigation is a "common sense" method to "resolve an enormous number of disputes before they ever grow into lawsuits." CAR suggests that this bill does not take away the right of any party ultimately to arbitrate or litigate a dispute because those alternatives are available if mediation does not result in a mutually agreeable resolution.

However, the California Trial Lawyers Association (CTLA) and Consumers Union (CU) have raised a number of concerns about the May 18 version of this bill. For example, both CTLA and CU contend that mandatory ADR, including mediation, imposes unnecessary and inappropriate expenses on consumers who wish to resolve their disputes; private mediators often charge between $350 to $500 an hour. Both CTLA and CU also contend that consumers will be put at a disadvantage by the mandatory mediation required by this bill; for example, without the assistance of legal counsel, consumers may be pressured into settling matters without a full understanding of their rights. Also, pre-filing mediation may make it impossible to discover the facts necessary to assess what constitutes a proper settlement of a dispute. CTLA also contends that existing law already provides clear statutory authority for realtors to include arbitration or mediation provisions in their contracts, and that this bill will mandate another form of pre-litigation ADR, which could be "catastrophic" for consumers; for example, an uninformed consumer could have the statute of limitations elapse during the mediation without being aware of the necessity to file a court action to prevent the running of the statute of limitations. CU also contends that parties can agree to mediate disputes under existing law, and that mediation should always be consensual. *[A. Floor]*

AB 3302 (Speier). Under existing law, DRE is required at the time of issuance or renewal of a license to require that any licensee provide its federal employer identification number if the licensee is a partnership or his/her social security number for all others. As amended May 18, this bill would provide that DRE may not process any application for an original license or for renewal of a license unless the applicant or licensee provides its federal employer identification number or social security number where requested on the application. *[A. W&M]*

SB 1509 (Leonard). Existing law prescribes the duty of a licensed real estate broker to a prospective purchaser of residential real property comprising one to four dwelling units to conduct a visual inspection of the property and to disclose all facts materially affecting the value or desirability of the property, if the broker has a written contract with the seller to find or obtain a buyer, as specified. Existing law provides that this inspection does not include an inspection of areas that are reasonably and normally inaccessible to such an inspection. As amended April 11, this bill would provide that it is the duty of a licensed real estate broker or salesperson to comply with these requirements and any regulations imposing standards of professional conduct adopted pursuant to a specified provision of law. The bill would provide that the inspection described above does not include areas off the site of the property or public records concerning the title or use of the property. The bill would provide that it is intended to clarify the obligations of real estate licensees and is not intended to change any existing duty of a broker or salesperson to disclose material facts within the knowledge of the licensee.

SB 1542 (Kopp), as amended April 28, would move DRE from the Business, Transportation and Housing Agency to the Business and Housing Agency, which this bill would create. *[A. Trans]*

The following is a status update on bills reported in detail in CRLR Vol. 14, No. 1 (Winter 1994) at pages 109–10:

AB 1718 (Peace). Under existing law, it is unlawful for a real estate broker to employ an unlicensed person to perform acts for which a license is required, for an unlicensed person to perform specified acts for which a real estate license is required, and for a person to advertise as a real estate broker without being licensed. As amended May 17, 1993, this bill would authorize the Real Estate Commissioner to levy an administrative fine for a violation of those provisions after first having issued a desist and refrain order, as specified. The fines would be credited to the continuously appropriated Recovery Account in the Real Estate Fund. *[S. B&P]*

SB 172 (Russell). Existing law requires a real estate broker who negotiates a loan secured by a lien on real property to deliver to the borrower a written statement containing specified information concerning the loan. As amended March 23, this bill would require specified notices prior to a borrower becoming obligated on any loan secured by a dwelling that provides for 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. *[Governor's Desk]*

SB 945 (Hart). Existing law requires every licensed real estate broker to have and maintain a definite place of business in California to serve as his/her office for the transaction of business. As amended July 13, 1993, this bill would exempt from that requirement a licensed real estate broker whose licensable California activities are limited to collecting payments or performing services, in connection with loans secured by a first lien on real property, for specified investors. The bill would also provide that a license issued to a real estate broker operating from a location outside California pursuant to this 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. *[A. W&M]*

SB 307 (Calderon). Existing law provides for the financing of real property and security for repayment of loans by means of a mortgage on real property. As amended March 9, this bill would provide that any homeowner whose home was destroyed because of the Northridge earthquake or November 1993 wildfires, and who is using temporary housing not covered by insurance, may delay payment of principal and interest on a mortgage, and of property taxes and assessments, for a period not to exceed two years, as specified. The bill would provide for repayment of the delayed mortgage payments over the life of the loan, but prohibit the assessment of penalties or interest on the unpaid amount during the period of delay. *[A. B&F]*

The following bills died in committee: **AB 2151 (Aguiar)**, which would have excluded certain representatives who are licensed real estate professionals from existing law which requires any defined representative of an equity purchaser, deemed to be the agent, employee or both of an equity purchaser, to provide specified proof of real estate licensure and bonding to the equity seller, and certain sworn statements regarding this licensure and bonding to all parties to the contract; **AB 647 (Frazee)**, which would have provided that an application by an aggrieved person to DRE for payment from the Real Estate Recovery Account specify that the application was mailed or delivered to the Department no later than one year after the most recent judgment became final; and **AB 2293 (Frazee)**, which would have—among other things—defined and regulated the sale or lease, or offering for sale or lease, of lots in an "improved out-of-state residential subdivision" and an "improved out-of-state time-share project."

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). 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 three employees and regulates only 15 state-chartered S&L institutions.

LEGISLATION

AB 1923 (Peace). Existing state law provides for the disclosure of certain account charges and deposit information relative to savings associations, credit unions, and industrial loan companies. As amended April 7, this bill repeals those provisions in deference to recent federal regulatory changes. This bill was signed by the Governor on May 9 (Chapter 68, Statutes of 1994).

AB 2830 (Brulte), as amended May 9, contains the provisions formerly in **SB 1145 (Boatwright)**, which was rejected on a 5–4 vote by the Senate Judiciary Committee on January 11. The controversial bill 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 its customer credit agreement and "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." *[14:1 CRLR 94]* Although the bill's sponsors and proponents argued that it would put an end to expensive class action lawsuits against lenders, consumer groups branded it as a backdoor attempt to exempt credit card fees from the Civil Code requirement that penalty fees be reasonably related to the actual costs they are supposed to cover. Not to be outdone, the banking industry promptly amended the provisions of SB 1145 into AB 2830 (Brulte), which is currently pending in the Assembly Judiciary Committee.

SB 1542 (Kopp), as amended April 28, would move DSL from the Business, Transportation and Housing Agency to the Business and Housing Agency, which this bill would create. *[A. Trans]*

The following is a status update on bills reported in detail in CRLR Vol. 14, No. 1 (Winter 1994) at pages 111–12:

AB 1756 (Tucker), as amended June 9, 1993, would prohibit 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 be required to annually submit a report to the legislature and to make summaries available to the public. These reports would include 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. *[A. Inactive File]*

The following bills died in committee: **SB 202 (Deddeh)**, which would have provided that no savings association or subsidiary thereof, without the prior written consent of the Savings and Loan Commissioner, and except as otherwise permitted by law, shall enter into certain specified transactions; **SB 161 (Deddeh)**, which would have required financial institutions to furnish depositors, if not physically present at the time of the initial deposit into an account, with a statement concerning charges and interest not later than seven business days after the date of the initial deposit; **AB 320 (Burton)**, which would have prescribed a maximum interest rate or finance charge which could be charged on credit card accounts issued by a bank, savings association, or credit union; and **AB 1995 (Archie-Hudson)**, which would have authorized state-chartered banks, savings associations, and credit unions to restructure a loan or extend credit terms and obligations to minority or women business enterprises in accordance with safe and sound financial operations.

LITIGATION

At this writing, the California Supreme Court is reviewing the Second District Court of Appeal's decision in ***People v. Charles H. Keating***, 16 Cal. App. 4th 280 (1993). In its ruling, the Second District affirmed a jury verdict in which the former savings and loan boss was found guilty of defrauding 25,000 investors out of $268 million by persuading them to buy worthless junk bonds instead of government-insured certificates. *[12:2&3 CRLR 169]*

In his appeal (No. S033855), Keating primarily challenges the trial court's jury instructions stating that Keating could be convicted under theories that he was either the direct seller of false securities in violation of Corporations Code sections 25401 and 25540, or a principal who aided and abetted the violations. Keating was convicted on 17 counts, all violations of